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**PROPOSALS
FOR A
CANADA
MUTUAL FUNDS
LAW**

**VOLUME II
STATUTE**

**BY
WARREN M.H. GROVER JAMES C. BAILLIE**

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PART I—INTERPRETATION

1.01 Interpretation

1.01(1) In this Act,

General Definitions

“ADMINISTRATOR” means the person appointed by the Minister under Part 13 as administrator;

Administrator

“ADVERTISING MATERIAL” means any material designed to encourage the purchase of mutual fund shares that is or is intended to be disseminated through the communications media, including television, radio, newspapers and magazines;

Advertising
Material

“CONTRACTUAL PLAN” means an arrangement whereby a person indicates an intention to make a number of payments for the purchase of mutual fund shares, if under the arrangement the proportion of an initial payment or group of payments to be deducted by way of sales charges is greater than the proportion ordinarily deducted by way of sales charges from payments made for shares of the mutual fund other than pursuant to such an arrangement;

Contractual
Plan

“CONVENTIONAL MUTUAL FUND” means a mutual fund that is not a non-conventional mutual fund;

Conventional
Mutual Fund

“COURT” means the Trial Division of the Federal Court of Canada;

Court

“COURT OF APPEAL” means the Appeal Division of the Federal Court of Canada;

Court
of Appeal

“DIRECTOR” means a director or officer of a corporation or a person occupying the position of a director or officer of a corporation by whatever name called or, in relation to unincorporated organizations, a person performing with respect thereto functions similar to those of a director or officer of a corporation;

Director

“DISTRIBUTION COMPANY” means each person with authority to offer for sale shares of a mutual fund whether that authority arises under the constating instruments of the mutual fund, under a contract or otherwise except that the term distribution company does not include the mutual fund itself or a person who derives his authority to offer for sale shares of the mutual fund solely from another person who is, or but for this exception would be, a distribution company;

Distribution
Company

“DISTRIBUTION CONTRACT” means the arrangement under which a distribution company derives its authority to offer for sale shares of a specific mutual fund, including an arrangement contained in the constating instruments of the mutual fund or in a contract entered into by the mutual fund;

Distribution
Contract

“FUND ON FUNDS” means a mutual fund defined in subsection 4.01(10);

Fund on Funds

| | |
|--------------------------------|--|
| Inappropriate Investments | “INAPPROPRIATE INVESTMENTS” means all assets other than permitted investments and restricted investments and includes all assets designated by the administrator as inappropriate investments; |
| Internally Managed Mutual Fund | “INTERNALLY MANAGED MUTUAL FUND” means a mutual fund accepted as such under section 2.10; |
| Investment Objectives | “INVESTMENT OBJECTIVES” means the goals sought by a specific mutual fund in the investment and management of its portfolio assets as disclosed either in the most recent prospectus, together with amendments thereto, for which a receipt has been issued by the administrator, or in the most recent annual report filed with the administrator in lieu of a prospectus under subsection 3.06(5); |
| Investment Practices | “INVESTMENT PRACTICES” means the general techniques used to attain the investment objectives of a specific mutual fund; |
| Issue Price | “ISSUE PRICE ” means the consideration to be received by a mutual fund upon the issue of a mutual fund share; |
| Management Company | “MANAGEMENT COMPANY” means a person with authority to make investment decisions concerning the portfolio assets of a mutual fund whether that authority arises under the constating instruments of the mutual fund, under a contract, or otherwise, except that the term management company does not include the mutual fund itself or any person who derives his authority to make investment decisions concerning the portfolio assets of the mutual fund solely from another person who is, or but for this exception would be, a management company; |
| Management Contract | “MANAGEMENT CONTRACT” means the arrangement under which a management company derives its authority to make investment decisions concerning the assets of a specific mutual fund, including an arrangement contained in the constating instruments of the mutual fund or in a contract entered into by the mutual fund; |
| Management Expenses | “MANAGEMENT EXPENSES” of a mutual fund means all costs of administration, fees for investment advice and other expenses prescribed in the regulations and incurred by the mutual fund together with the cost to the mutual fund of all assets other than portfolio assets and the excess of any brokerage fees and similar payments above reasonable transaction costs, but does not include income taxes, security transfer taxes, brokerage fees and similar payments required for the purchase and sale of portfolio assets; |
| Management Expense Ratio | “MANAGEMENT EXPENSE RATIO” in relation to a mutual fund over a period of time means the aggregate of all management expenses payable by the mutual fund with respect to that period of time, divided by the average of the net assets of the mutual fund on all days upon which net assets value per share was calculated during that period of time if such calculations were made at consistent intervals during that period of time and if such calculations were not made at consistent intervals then the division |

shall be by a weighted average of net assets in a manner acceptable to the administrator;

“MINISTER” means the Minister of Consumer and Corporate Affairs; Minister

“MUTUAL FUND” means an organization, the net assets of which are used to determine the amount that an owner of mutual fund shares is entitled to receive on surrender thereof; Mutual Fund

“MUTUAL FUND COMPLEX” means a mutual fund together with the management company and the distribution company or companies that have a management contract or one or more distribution contracts with that mutual fund; Mutual Fund Complex

“MUTUAL FUND SHARE” and “SHARE OF A MUTUAL FUND” means an interest whether referred to as a share or unit or by some other term, one of the rights appertaining to which is that the owner is entitled to surrender the interest at his option and to receive, on or after the surrender, an amount computed by reference to the proportionate interest represented by that interest in the net assets of a specified organization; but a mutual fund share does not cease to be a mutual fund share merely by reason of the suspension of the owner’s entitlement to receive such amount at his option; Mutual Fund Share

“NET ASSETS” in relation to an organization at any time means the total value of all assets of the organization less all of its liabilities (other than members’, unit holders’, shareholders’, or participants’ equity) at that time; Net Assets

“NET ASSET VALUE PER SHARE” in relation to the mutual fund shares of a mutual fund outstanding at any time, means the net assets of the mutual fund at that time divided by the number of mutual fund shares and shares ranking equally therewith outstanding at the time; Net Asset Value Per Share

“NET LIQUID ASSETS” in relation to a mutual fund at any time means the excess of the net assets of the mutual fund at that time over the value of its restricted investments at the time; Net Liquid Assets

“NON-CONVENTIONAL MUTUAL FUND” means a mutual fund that has made an election under section 2.07 that it be treated as a non-conventional mutual fund if that election has been accepted by the administrator and has not subsequently been terminated; Non-Conventional Mutual Fund

“ORGANIZATION” means a corporation, trust or other identifiable structure or group of assets under common ownership that is carried on or operated or invested with a view to making profits; Organization

“OUTSTANDING” as that term is applied to mutual fund shares of a specific mutual fund does not include mutual fund shares of that mutual fund owned by it or on its behalf; Outstanding

| | |
|------------------------|--|
| Permitted Investments | <p>“PERMITTED INVESTMENTS” means:</p> <ul style="list-style-type: none"> a) cash or a deposit with a chartered bank, trust company or similar institution of any country if the cash or the deposit to the extent likely to be necessary in the operation of the mutual fund which is the owner thereof, is convertible into Canadian currency without restriction, and b) commercial paper as prescribed in the regulations, and c) publicly traded securities for which price quotations based on such trading are regularly published, and d) assets or types of assets designated by the administrator as permitted investments, <p>unless subject to any contractual or legal restraint which would prevent an immediate sale, but no assets or types of assets designated by the administrator as restricted investments or inappropriate investments are permitted investments;</p> |
| Person | <p>“PERSON” includes an organization;</p> |
| Planholder | <p>“PLANHOLDER” means a person who has agreed to purchase mutual fund shares pursuant to a contractual plan that has been neither completed nor terminated;</p> |
| Portfolio Assets | <p>“PORTFOLIO ASSETS” means securities or other assets acquired for the purpose of investment or resale;</p> |
| Redemption Price | <p>“REDEMPTION PRICE” means the amount that the owner of a mutual fund share is entitled to receive on surrender thereof;</p> |
| Restricted Investments | <p>“RESTRICTED INVESTMENTS” means:</p> <ul style="list-style-type: none"> a) assets which would be permitted investments but for the fact that an immediate sale thereof may not be made because of contractual or legal restraint, b) mortgages upon real property that satisfy the criteria prescribed in the regulations, and c) assets or types of assets designated by the administrator as restricted investments, <p>except where designated by the administrator as either permitted investments or inappropriate investments;</p> |
| Sales Charge | <p>“SALES CHARGE” means the excess of what a purchaser of mutual fund shares is required to pay for shares of the mutual fund, excluding insurance premiums, custodial fees or like service fees paid at the time of the purchase to the extent they can be separately identified as such, over the issue price of the mutual fund shares;</p> |
| Sales Literature | <p>“SALES LITERATURE” means all material, other than the prospectus, the summary prospectus and advertising material, designed to encourage the purchase of mutual fund shares and includes records, video tapes and similar material as well as printed literature but does not include material that</p> |

is not designed to be shown to prospective purchasers or to the public generally and is not in fact so shown;

“SECURITY” means a bond, debenture, note, evidence of indebtedness, share or other interest or instrument commonly known as a security or a warrant or right to subscribe to or purchase or sell any of the foregoing;

Security

“SHARE” means, in the case of a corporation, a share of the capital stock of the corporation and, in the case of any other organization, a unit or other evidence of a right of participation in the profits of the organization as a result of the investment of money therein otherwise than by way of loan;

Share

“SHORT SALE” means any sale of a security that is to be consummated by the delivery of a security:

- a) borrowed by or for the account of the seller, or
- b) acquired after the effecting of the sale otherwise than pursuant to a right held prior to the sale to acquire the security;

Short Sale

“STATED INVESTMENT PRACTICES” means the investment practices of a mutual fund, whether described negatively or positively, as described either in the most recent prospectus, together with amendments thereto, for which a receipt has been issued by the administrator or in the most recent annual report filed with the administrator in lieu of a prospectus under subsection 3.06(5);

Stated Investment Practices

“UNREALIZED CAPITAL GAIN” in relation to any of the portfolio assets of a mutual fund, means the excess of the fair market value thereof over the cost thereof to the mutual fund, including in the calculation of the cost thereof any necessary acquisition and carrying charges to the extent that those charges would ordinarily be included in the calculation of the net assets of the mutual fund.

Unrealized Capital Gain

1.01(2) For the purposes of this Act, a person shall be considered an “associate” of another person, which other person is referred to in this subsection as the associator, if:

- a) the associator is prohibited from making an investment in or a loan to that person under the provisions of section 4.02 hereof;
- b) the associator owns directly or indirectly more than ten percent of any class of the outstanding participating shares of that person;
- c) the associator is a partner of that person;
- d) the associator has a substantial beneficial interest in a trust of which that person is a trustee;
- e) the associator is a trustee of a trust in which that person has a substantial beneficial interest;
- f) the associator is the spouse or lineal ascendant or descendant of that person;
- g) the associator is a mutual fund which, together with one or more related mutual funds, owns directly or indirectly more than ten percent of any class of the outstanding participating shares of that person;

Associate

h) that person has been designated by the administrator as an associate of the associator,
but a person is not an associate of the associator if the person has been designated not to be an associate of the associator by the administrator or if the person is one of a class of persons designated not to be an associate of the associator by the administrator.

Associate
of Associate

1.01(3) For the purposes of this Act, a person who is an associate of another person is an associate of associates of that other person.

Related
Mutual Fund

1.01(4) For the purposes of this Act, one mutual fund is a "related mutual fund" of another mutual fund if both mutual funds are mutual funds to which this Act applies and:

- a) they both have the same management company; or
- b) the management company of one of them is an associate of the management company of the other of them; or
- c) the administrator deems them to be related.

Management
Company
Extended
Definition

1.01(5) For the purposes of the definition of management company the fact that investment decisions are subject to approval or review by another person or by a board of directors shall not be considered to be inconsistent with the authority contemplated by that definition.

Substantial
Beneficial
Interest in
a Trust

1.01(6) For the purposes of the definition of associate in subsection (2) a person has a substantial beneficial interest in a trust if he has a right, whether vested or contingent, defeasible or indefeasible, to receive at least ten percent of the annual income of the trust or to receive at least ten percent of the corpus of the trust.

PART II—APPLICATION AND REGISTRATION

2.01 Mutual Funds Subject to Act

2.01(1)

Subject to subsection (2), this Act applies to a mutual fund if:

a)

it is incorporated or organized in Canada before the date this Act becomes effective and, after that date, its mutual fund shares are distributed to the public in Canada; or

b)

it is incorporated or organized in Canada after the date this Act becomes effective; or

c)

it voluntarily registers under this Act; or

d)

it is licensed under subsection (3).

Mutual Funds to which Act Applies

2.01(2)

This Act does not apply to a mutual fund, unless it becomes registered under this Act in accordance with paragraph (c) of subsection (1), if it is:

a)

a separate and distinct fund maintained by a life insurance company pursuant either to subsection 81(6) of the Canadian and British Insurance Companies Act or to substantially equivalent provisions of other applicable legislation; or

b)

a mutual fund of which the issued shares are beneficially owned by fewer than fifty persons.

Funds to which Act Inapplicable

2.01(3)

A mutual fund, other than a mutual fund described in paragraph (a) of subsection (2), which is neither incorporated nor organized within Canada shall not distribute its shares to the public in Canada unless it obtains a license from the administrator.

Foreign Mutual Funds

2.01(4)

For the purposes of determining beneficial ownership under paragraph (b) of subsection (2) the registered owners of shares shall be presumed to be all of the beneficial owners, except in the case of deliberate use of this subsection to evade the provisions of this Act, until the administrator makes a determination to the contrary after a hearing.

Beneficial Ownership of Shares

2.01(5)

For the purposes of subsection (3) shares of a mutual fund are presumed not to have been distributed to the public in Canada if the mutual fund has less than fifty registered shareholders resident in Canada.

Presumption as to Public Distribution

2.02 Application to Mutual Fund Complex

2.02(1)

The management company of an unincorporated mutual fund is responsible for compliance with each requirement, prohibition or other provision of this Act specified to be applicable to the mutual fund or for compliance with which the mutual fund would otherwise be responsible under subsection (2).

Responsibility for Unincorporated Mutual Fund

2.02(2)

Responsibility for compliance with any provision made applicable by this Act to a mutual fund complex shall be that of:

Responsibility within a Mutual Fund Complex

- a) the management company that forms part of the mutual fund complex if the management company has authority or responsibility to comply with the provision;
- b) any distribution company that forms part of the mutual fund complex if that distribution company has authority or responsibility to comply with the provision; and
- c) the mutual fund, unless either the management company that forms part of the mutual fund complex or a distribution company that forms part of the mutual fund complex has authority or responsibility to comply with the provision.

Interpretation

2.02(3) Subject to subsection (4), in the determination of the allocation of responsibility within the mutual fund complex under subsection (2), authority or responsibility for compliance with a provision shall be considered to be that of a management company or a distribution company if the relevant management contract or distribution contract permits or requires the management company or distribution company to conduct on behalf of the mutual fund the activity that is affected by the provision whether or not that provision is expressly referred to and shall also be so considered if the management company or distribution company acts in such a way as to represent that it has authority or responsibility to conduct on behalf of the mutual fund the activity that is the subject of the provision.

Specified
in Contract

2.02(4) If either the management contract or a distribution contract clearly specifies the allocation of responsibility for any provision of this Act as contemplated under this section to the management company or the distribution company, as the case may be, then only that party to whom the responsibility is allocated shall be responsible for compliance with the provisions of this Act with respect thereto.

Application
to Internally
Managed Mutual
Fund

2.02(5) Unless exempted by an order of the administrator made pursuant to section 2.10, an internally managed mutual fund is subject to each requirement, prohibition or other provision of this Act which would otherwise apply to a management company or to a distribution company of that mutual fund.

2.03 Required Registration Date

Mutual Fund
to Register

2.03(1) Subject to subsection (2) a mutual fund shall register with the administrator on or prior to the date which is the earlier of:

- a) one month after the date upon which the mutual fund becomes a mutual fund to which this Act applies; and
- b) the date of commencement of the initial distribution to the public in Canada of mutual fund shares issued by the mutual fund if it is reasonable to anticipate that after that distribution the fund will have more than fifty shareholders.

One Year
Transition

2.03(2) A mutual fund is not required to register with the administrator prior to a date which is one year after the date upon which this Act becomes effective.

| | | |
|---------|--|----------------------------------|
| 2.03(3) | The management company of any unincorporated mutual fund shall effect the registration of the mutual fund. | Unincorporated Fund Registration |
| 2.03(4) | A mutual fund not required to register under this Act may register at any time. | Voluntary Registration |

2.04 Registration of Management and Distribution Companies

| | | |
|---------|---|---|
| 2.04(1) | Subject to subsection (2) every management company having a management contract with and every distribution company having a distribution contract with one or more mutual funds to which this Act applies shall register with the administrator on or prior to the earliest date on which any of the mutual funds with which it has a management contract or a distribution contract is required to register with the administrator. | Registration of Management and Distribution Companies |
| 2.04(2) | This Act does not apply to any management company which has no management contract or any distribution company which has no distribution contract with any mutual fund to which this Act applies. | Exempt Management and Distribution Companies |

2.05 Duration of Registration

| | | |
|---------|--|------------------|
| 2.05(1) | Except where this Act otherwise provides no provision of this Act is applicable to a mutual fund, management company or distribution company until the date which is the earlier of that upon which it is required to register with the administrator and that upon which it actually so registers, but this Act is applicable from and after that date to a mutual fund, management company or distribution company that is required to register regardless of whether it so registers. | When Act Applies |
| 2.05(2) | A mutual fund registered under this Act may, at any time when it satisfies one of the provisions of subsection 2.01(2) file a notice of de-registration, in the form prescribed by the regulations, with the administrator and thereafter this Act does not apply to that mutual fund until it voluntarily registers under subsection 2.03(3) or is required to register under subsection 2.03(1). | De-registration |

2.06 Registration Procedure

| | | |
|---------|--|----------------------------|
| 2.06(1) | Each mutual fund, management company, distribution company and salesman required to register under this Act with the administrator shall do so by completing the prescribed form and delivering it to the administrator together with the prescribed fee and any other material required by this Act or the regulations. | Procedure for Registration |
| 2.06(2) | Subject to section 9.03, the administrator shall, upon delivery to him of the material required under subsection (1), in proper form, issue a receipt dated as of the date of delivery or as of any later date that may be agreed to by the administrator and the applicant. | Receipt |

Additional
Information
Required

2.06(3) The administrator may require any further information or material to be submitted by any applicant or registrant within a specified time and may require verification by statutory declaration or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any director or employee of the applicant or of the registrant to submit to examination under oath by a person designated by the administrator on matters relating to such applicant or registrant which could affect his suitability for registration.

2.07 Election to be Non-Conventional Fund

Election to be
Non-Conven-
tional Fund

2.07(1) A mutual fund may elect by notice to the administrator to be treated as a non-conventional mutual fund at the time of registration or an election to that effect may be delivered to the administrator at any time by or on behalf of a mutual fund previously registered with the administrator but no such election is effective until accepted by the administrator which acceptance shall be subject to the provisions prescribed in the regulations.

Election to
be Conven-
tional Fund

2.07(2) A non-conventional mutual fund may elect by notice to the administrator to be treated as a conventional mutual fund but the election shall not take effect until any necessary modifications are made in the investment objectives and in the stated investment practices of the mutual fund.

2.08 Changes in Information Filed

To Notify
Changes re
Mutual Fund
Complex

2.08(1) A mutual fund complex shall, within five days of the event, notify the administrator in writing of:

- a) any change in address for service or any business address;
- b) any change in the directors of the mutual fund, management company or distribution company;
- c) the commencement and termination of employment of every salesman employed by the mutual fund complex who is required to be registered under this Act and in the case of termination of employment the reason therefor;
- d) the opening or closing of any branch office and, in the case of the opening of any branch, the address thereof and the name and address for service of the person in charge thereof; and
- e) any change in the name or address for service of the person in charge of any branch office.

Idem
Salesman

2.08(2) A registered salesman shall, within five days of the event notify the administrator in writing of:

- a) any change in his address for service; and
- b) every commencement and termination of his employment by a distribution company.

Idem
Registrant

2.08(3) A registrant shall forthwith notify the administrator of any material change in any matter set out in his application for registration which is not included in subsections (1) or (2).

209 **Duplication**

2.09 The administrator may, on such terms and conditions as he may impose, exempt in whole or in part any mutual fund, management company or distribution company from any of the provisions of this Act if the laws to which the person is subject provide substantially similar or equally adequate protection for investors or conflict with the provisions of this Act.

Administrator
may Exempt

2.10 Internally Managed Mutual Fund

2.10(1) A mutual fund or the organizer of a proposed mutual fund that proposes to issue or that has outstanding mutual fund shares but that is not or does not propose to be associated with a management company may make application to the administrator for permission to operate as an internally managed mutual fund and, if the administrator is satisfied that the operation of the mutual fund without a management company is or would be in the public interest he may, subject to any terms and conditions that he deems appropriate, grant the application.

Internally
Managed
Mutual Fund

2.10(2) The administrator may include in any permission granted under subsection (1), any exemptions that seem reasonably necessary from provisions of this Act which contemplate that a mutual fund be associated with a management company, to the end that it will be feasible for the internally managed mutual fund to comply with the intent of this Act.

Management
Arrangements

2.10(3) The administrator may include in any permission granted under subsection (1), any exemptions that seem reasonably necessary from provisions of this Act which contemplate that mutual fund shares be sold to the public through distribution companies but, if the mutual fund proposes to issue mutual fund shares the permission is to be granted only if the administrator is satisfied that the sale of mutual fund shares by the internally managed mutual fund is consistent with the protection of present and future holders of those shares.

Distribution
Arrangements

PART III—GENERAL REQUIREMENTS GOVERNING THE OPERATION OF MUTUAL FUNDS

3.01 Relationship with Management and Distribution Companies

To have
Distribution
Company

3.01(1) Subject to section 2.10, a mutual fund shall not sell its mutual fund shares except to or through one or more distribution companies.

To have
Management
Company

3.01(2) Subject to section 2.10, a mutual fund shall have a management contract with a management company.

Combined
Manager and
Distributor

3.01(3) The management company of a mutual fund may also be a distribution company of that mutual fund.

3.02 Equity Capital

Permitted
Securities

3.02(1) A mutual fund shall not issue any securities other than shares described in subsection (2) and other securities permitted under subsection (3) or subsection 3.03(1).

Share Rights

3.02(2) Each mutual fund share and other shares issued by a mutual fund shall carry identical rights except as permitted under subsection (4) and except that a mutual fund may issue classes of shares that may be denied the right of redemption at the option of the holder if such shares are not distributed to the public.

Options

3.02(3) A mutual fund shall not issue any options, warrants or other rights entitling the holder thereof to purchase shares of the mutual fund except at a price equal to the issue price in effect at the date of the purchase of the share.

Voting

3.02(4) Subject to subsection 5.01(13) shares issued by a mutual fund may be divided into different classes or series with differing voting rights attaching to each series or class.

3.03 Borrowing

General
Borrowing

3.03(1) A mutual fund shall not issue any debt obligations or become liable under any borrowing arrangement or agreement unless the express terms of the obligation, arrangement or agreement provide that the mutual fund may repay the loan at any time without notice or bonus and that no standby fee, interest or other charge is payable to the lender or proposed lender except on amounts actually advanced and prior to their repayment.

Permitted
Lenders

3.03(2) Subject to subsections (8) and (9), a mutual fund shall not borrow money or any other asset from any person except a bank, trust company, insurance company or loan company or a lending institution specified in the regulations hereunder.

| | |
|--|--|
| 3.03(3) A conventional mutual fund shall not borrow any assets other than money. | Only Money to be Borrowed |
| 3.03(4) A conventional mutual fund shall not borrow money if, after the borrowing and allowing for the discharge of indebtedness to be immediately repaid from the borrowed money, the outstanding liabilities of the mutual fund for borrowed money would exceed fifteen percent of the net assets of the mutual fund. | Conventional Test |
| 3.03(5) A non-conventional mutual fund shall not borrow any assets other than money or securities required to cover short sales. | Borrowing Securities |
| 3.03(6) A non-conventional mutual fund shall not borrow money or effect a short sale if, after the borrowing and allowing for the discharge of indebtedness to be immediately repaid from the borrowed money, or after the short sale, the outstanding liabilities of the mutual fund for borrowed money and short sales would exceed seventy-five percent of the net liquid assets of the mutual fund. | Non-conventional Test |
| 3.03(7) For the purposes of subsection (6) the outstanding liability of the mutual fund at any time for a short sale, whether or not securities have been borrowed to effect the short sale, shall be the then market value of the securities which would be necessary to cover the short sale, and any account receivable arising through the sale of the securities as a result of the short sale shall be treated for the purposes of determining net liquid assets as an asset that is not a restricted investment. | Short Sale Liability |
| 3.03(8) Notwithstanding subsection (2) a mutual fund may become indebted to a stock broker for securities required to cover short sales if the short sales are permitted under subsection 4.01(2). | Borrowing Securities |
| 3.03(9) Notwithstanding subsection (2) a mutual fund may borrow: <ul style="list-style-type: none"> a) money from any source to meet emergency requirements for cash if after the borrowing the outstanding liabilities of the mutual fund for borrowed money would not exceed five percent of its net assets; b) money or other assets from the management company with which it has a management contract if there is no interest or other charge payable by the mutual fund with respect to the borrowing and if the tests in subsections (4) or (6), as the case may be, are complied with. | Special Borrowing |
| 3.03(10) Any mutual fund which has borrowed money under paragraph (a) of subsection (9) from a person other than one from whom borrowing is permitted under subsection (2) shall not, until the loan has been repaid in full, purchase any assets which would become portfolio assets other than assets required to cover a short sale entered into before the borrowing took place. | Restrictions on Investment during Emergency Loan |

3.04 Source of Funds for Dividends

Dividends
out of
Unrealized
Capital Gains

3.04 No mutual fund shall declare or pay any dividend to a shareholder if after the payment its net assets would be less than an amount equal to its aggregate unrealized capital gains.

3.05 Capital Requirements

Minimum
Capital

3.05(1) No person shall distribute mutual fund shares to the public unless the mutual fund has net assets in excess of one hundred thousand dollars or such larger amount as may be prescribed by the regulations.

Escrow

3.05(2) No person shall distribute mutual fund shares to the public until there has been deposited with a trustee acceptable to the administrator shares of the mutual fund with a value of at least fifty thousand dollars at the date of deposit pursuant to an escrow agreement that complies with the provisions prescribed in the regulations.

Restricted
Shares

3.05(3) No person shall distribute to the public shares of a mutual fund whose net assets are less than three hundred thousand dollars until there has been filed with the administrator an agreement between the mutual fund and persons owning not less than fifty thousand dollars in value of shares of the mutual fund other than shares placed in escrow pursuant to subsection (2), that provides that the mutual fund shares will not be surrendered for redemption if after their redemption the net assets of the mutual fund would be less than three hundred thousand dollars.

Contravention
of Escrow

3.05(4) No parties to an escrow agreement under subsection (2) or to an agreement under subsection (3) shall amend the agreement or act in contravention thereof without the prior consent of the administrator.

3.06 Prospectus

File
Prospectus

3.06(1) A mutual fund complex shall, on or before the latest date on which the mutual fund that forms part thereof is required to register under section 2.03 and within thirteen months after the date of the receipt for the last prospectus filed hereunder with respect to that mutual fund, file with the administrator a prospectus with respect to that mutual fund in prescribed form.

Additional
Documents

3.06(2) A prospectus when filed shall be accompanied by any additional documents, reports and other material that may be prescribed by the regulations and may include the annual report required by section 5.02.

Receipt for
Prospectus

3.06(3) The administrator shall issue a receipt for a prospectus unless:

- a) the prospectus does not comply with this Act or the regulations;
or
- b) the prospectus contains any statements which the administrator believes may be misleading or deceptive to a prospective investor;
or

- c) the prospectus omits to state any material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made.

3.06(4) Where a material adverse change occurs in the affairs of a mutual fund, the mutual fund complex of which the mutual fund forms part shall file with the administrator an amendment to the prospectus or the annual report filed in lieu of a prospectus under subsection (5) as soon as practicable.

Material
Adverse Change

3.06(5) Notwithstanding subsection (1), a mutual fund the shares of which are not being distributed to the public may file, at or prior to the date on which a prospectus would otherwise be required, in lieu of a prospectus, an annual report that complies with section 5.02 and contains all additional information prescribed by the regulations, together with any supplementary material relating to matters normally contained in the prospectus that the administrator may require.

Closed-end
Fund

3.06(6) So long as its mutual fund shares are being distributed to the public a mutual fund complex shall file concurrently with each prospectus filed under subsection (1) or any amendment thereto filed under subsection (4) a summary prospectus that complies with the regulations.

Summary
Prospectus

3.06(7) The administrator shall examine the summary prospectus to satisfy himself that the contents thereof adequately and plainly summarize the prospectus and any amendments thereto and if so satisfied he shall issue a receipt therefor unless he is not issuing a receipt for the prospectus under subsection (3).

Receipt for
Summary
Prospectus

3.06(8) Notwithstanding subsections (1), (5) and (6) the administrator may permit variations in the times at which the filing of a prospectus, a summary prospectus or an annual report are required where the requirements of this Act or other statutes would lead to additional expense and the administrator is satisfied that the variations will not detract substantially from the value of the information available to prospective purchasers.

Power to
Vary

3.07 Limitations on Funds Selling Contractual Plans

3.07(1) A mutual fund complex shall not enter into, issue mutual fund shares pursuant to, or sell a contractual plan unless:

Limitations
on Funds
with Contractual
Plans

- a) the mutual fund shares sold under the contractual plan are issued by a mutual fund which has net assets in excess of one million dollars at the time the contractual plan is first proposed to the prospective planholder;
- b) the mutual fund is a conventional mutual fund; and
- c) an agreement that complies with the regulations is in effect with a custodian to provide for custody of the mutual fund shares issued pursuant to, the allocation of the money collected under and the servicing of the contractual plan.

Cannot
Become Non-
conventional
Fund

3.07(2) A mutual fund shall not elect to become a non-conventional mutual fund under section 2.07 while contractual plans relating to its mutual fund shares are outstanding.

3.08 Mutual Fund Expenses

Prohibition
On Extra
Expenses

3.08 A mutual fund shall not assume any obligation to pay any expenses, other than those permitted under section 7.04, those imposed by or pursuant to statute or court order and such other expenses, including custodial fees, as the regulations permit as being reasonably necessary to the proper functioning of a mutual fund.

3.09 Books and Records

Books to
be kept

3.09(1) A mutual fund complex shall maintain or cause to be maintained all accounts and records prescribed in the regulations.

Inspection

3.09(2) The accounts and records maintained under subsection (1) shall be open to inspection by the administrator and, to the extent permitted by the by-laws or regulations of the association, any self regulatory association recognized by the administrator under subsection 12.03(13) of which the mutual fund that forms part of the complex is a member.

Delegate's
Undertaking

3.09(3) Before delegation of any matters related to the management of portfolio assets, distribution of mutual fund shares or valuation of assets of a mutual fund, the mutual fund complex of which that mutual fund forms part shall file with the administrator an undertaking, if applicable, of the person to whom the matter is to be delegated that, to the extent that accounts and records required to be kept under this Act or the regulations are to be kept by the delegate, they shall be open to inspection as contemplated by subsection (2).

PART IV—INVESTMENT RESTRICTIONS

4.01 Permitted Investments

4.01(1) A mutual fund shall not:

- a) acquire, as portfolio assets, inappropriate investments;
- b) make a loan except a loan which is either secured by a mortgage on real estate or is evidenced by a bond, debenture, note or like instrument;
- c) acquire assets prohibited by its stated investment practices.

To invest in
Portfolio
Assets

4.01(2) A mutual fund shall not effect a short sale of a security unless:

- a) the mutual fund is a non-conventional mutual fund whose stated investment practices expressly provide for short sales;
- b) the security in which the short sale is effected is a permitted investment and is listed on a recognized stock exchange;
- c) the short sale is effected in accordance with the rules of that stock exchange; and
- d) the short sale does not contravene subsection 3.03(6).

Restrictions
on Short Sales

4.01(3) Subject to subsection (4), a mutual fund shall not purchase a restricted investment if after the purchase the aggregate value of all restricted investments, valued in the manner used for the determination of net assets held by it would exceed fifteen percent of the net assets of the mutual fund.

Restricted
Investments

4.01(4) Where for any specific non-conventional mutual fund satisfactory arrangements exist, including arrangements for valuation of restricted investments held or to be held by that mutual fund, the administrator may increase the fifteen percent limit under subsection (3) but he shall not raise that limit above forty percent.

Idem
Non-conven-
tional Fund

4.01(5) If at any time the value of the restricted investments of a mutual fund, valued in the manner used in the determination of net assets and expressed as a percentage of the net assets of that mutual fund is greater than the greater of the percentage:

To Report
Default

- a) stated in subsection (3); or
- b) as increased by the administrator under subsection (4),

the mutual fund complex shall report such fact forthwith to the administrator.

4.01(6) A mutual fund shall not:

- a) subject to subsection (7), purchase securities of any class of an issuer if after the purchase the mutual fund together with related mutual funds would own over twenty percent of the outstanding securities of that class; or
- b) acquire by purchase, conversion of securities or otherwise, shares of an issuer having full voting rights under all circumstances if after the acquisition the mutual fund, together with related mutual funds, would be entitled to vote more than ten percent of the votes

Quantitative
Limitations

attached to all outstanding securities of the issuer at a general meeting thereof; or

- c) invest more than ten percent of its net assets in securities of or guaranteed by the same issuer,

except that this subsection shall not,

- d) prevent a mutual fund from owning, beneficially and of record, all of the shares of an organization which is engaged in any activities in which the mutual fund itself is entitled to engage, if the mutual fund and all such organizations on a consolidated basis satisfy all the requirements imposed by this Act; or
- e) prevent a mutual fund constituted for such purpose from investing in the mutual fund shares of another mutual fund if those mutual fund shares are the only portfolio asset, other than cash or government bonds, of the first mentioned mutual fund and, unless the administrator agrees to the contrary, the other mutual fund is a mutual fund registered or licensed under this Act.

Exception

4.01(7) A mutual fund may purchase securities of an issuer in excess of the twenty percent limit referred to in paragraph (a) of subsection (6), subject to other provisions of this Act if:

- a) the security so purchased is a mortgage secured on real estate; or
- b) the security so purchased is commercial paper as prescribed in the regulations; or
- c) the amount purchased that is in excess of twenty percent of the outstanding securities of any one class is treated as a restricted investment for the purposes of subsections (3) or (4) for as long as the twenty percent limit is exceeded and where the securities involved are held by related mutual funds the excess shall be apportioned as agreed between them.

Investment
in other
Mutual Funds

4.01(8) A mutual fund shall not invest in the securities of another mutual fund whether or not this Act applies to the last mentioned mutual fund, except pursuant to the exceptions to subsection (6) or as permitted in subsection (9).

Fund on
Funds

4.01(9) A fund on funds may invest in:

- a) the securities of other mutual funds;
- b) permitted investments other than securities of other mutual funds if, after the investment, the aggregate value of the portfolio assets of the fund on funds, other than cash and securities of other mutual funds does not exceed twenty percent of the net assets of the fund on funds;

but a fund on funds shall not invest in,

- c) any other fund on funds;
- d) without the consent of the administrator, a mutual fund not registered or licensed under this Act; or

- e) a mutual fund if, after the investment, the fund on funds together with other related mutual funds would own more than six percent of the outstanding mutual fund shares of the mutual fund.

4.01(10) For the purposes of subsection (9) a fund on funds is a mutual fund, the investment objectives and stated investment practices of which contemplate the investment by the mutual fund in more than one other mutual fund.

Definition

4.01(11) The administrator may categorize any asset, or type of asset as a permitted investment, restricted investment or inappropriate investment and in so doing may differentiate among categories on the basis of whether the mutual fund desiring to invest in such assets is a conventional mutual fund or non-conventional mutual fund.

Administrator
may
Categorize
Assets

4.01(12) Notwithstanding any provisions of this section the administrator may require any mutual fund to sell any securities of a single issuer held as portfolio assets by that mutual fund if the securities are being used to control or to attempt to control that issuer.

Sale
Requirement

4.02 Prohibited Investments

4.02(1) A mutual fund shall not knowingly make an investment:

Prohibited
Investments

- a) by way of loan to,
 - i) a director of the mutual fund, of the management company or of the distribution company constituting the mutual fund complex of which the mutual fund forms a part, or the spouse or child of any of them, or
 - ii) an individual, his spouse or any of his children if either the individual or a group consisting of any one or more of the individual, his spouse and his children is a substantial shareholder of the mutual fund, the management company or the distribution company constituting the mutual fund complex of which the mutual fund forms a part;
- b) in the management company or any distribution company of the mutual fund or in an organization that is a substantial shareholder of the mutual fund, the management company or the distribution company constituting the mutual fund complex of which the mutual fund forms a part; or
- c) in an organization in which,
 - i) an individual mentioned in sub-paragraph a)i),
 - ii) a person that is a substantial shareholder of the mutual fund, management company or distribution company constituting the mutual fund complex of which the mutual fund forms a part,
 - iii) either the management company or the distribution company of the mutual fund complex of which the mutual fund forms a part or the two of them together, or

- iv) a group consisting exclusively of individuals mentioned in sub-paragraph a)i),
has a significant interest.

Indirect
Investment

4.02(2) A mutual fund shall not knowingly enter into any contract or other arrangement that results in its being directly or contingently liable in respect of any investment which by this section it is prohibited from making.

Disposition

4.02(3) A mutual fund shall not knowingly hold an investment after the date this Act becomes effective that, at the time it was made, was an investment described in subsection (1).

Interpretation

4.02(4) For the purposes of this section,

- a) a person has a significant interest in an organization, or a group of persons has a significant interest in an organization if,
 - i) in the case of a person, he owns beneficially, either directly or indirectly, more than ten percent, or
 - ii) in the case of a group of persons, they own beneficially, either individually or together, and either directly or indirectly, more than fifty percent,of the outstanding shares of the organization;
- b) a person is a substantial shareholder of an organization or a group of persons is a substantial shareholder of an organization if that person or group of persons owns beneficially, either individually or together, and either directly or indirectly, shares to which are attached more than ten percent of the voting rights attached to all of the outstanding shares of the organization, and in computing the percentage of voting rights attached to shares owned by an underwriter there shall be excluded the voting rights attached to shares acquired by him as an underwriter during the course of distribution to the public by him of such shares;
- c) "investment" means,
 - i) an investment in an organization by way of purchase of bonds, debentures, notes or other evidences of indebtedness thereof or shares thereof, or
 - ii) a loan to a person or persons.

Exemption

4.02(5) The administrator may, by order, on application by a mutual fund or its management company exempt the mutual fund from the application of any provision of this section in relation to an investment or investments of any particular class described in the order.

Downstream
Investment

4.02(6) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, shares of an organization to which voting rights are attached that person or group of persons shall be deemed to own beneficially, a proportion of each class of shares of any other organization that are owned beneficially directly or indirectly, by the first mentioned organization, which proportion shall equal the proportion of the shares of the first mentioned organization to which voting rights are attached that are

owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons.

4.02(7) Except with the written consent of the administrator a mutual fund shall not knowingly make any investment in consequence of which an associate of the mutual fund will receive any fee or other compensation except reasonable brokerage fees or fees paid pursuant to a contract described either in the most recent prospectus for which a receipt has been issued by the administrator or in the annual report filed in lieu of a prospectus under subsection 3.06(5).

Further
Prohibition

4.02(8) For the purposes of this section, any fact known to the management company or to a distribution company that forms part of a mutual fund complex shall be deemed to be known by the mutual fund that forms part of that mutual fund complex.

Knowledge

PART V—RIGHTS OF MUTUAL FUND SHAREHOLDERS

5.01 Material for Meetings

Notices of Meeting

5.01(1) Where approval by shareholders of the mutual fund is required or voting by shareholders is provided for under sections 5.03, 8.02, 10.01, 12.01 or 12.02, the mutual fund complex of which that mutual fund forms a part shall, unless exempted by the administrator, call a meeting of the shareholders.

Proxy Form

5.01(2) For the purpose of calling a meeting under subsection (1), the mutual fund complex shall, at least twenty-one days before the meeting, give notice of the meeting and concurrently with giving notice send by prepaid mail a proxy in prescribed form to each mutual fund shareholder at his latest address as shown on the records of the mutual fund complex.

Solicitation of Proxies

5.01(3) A person shall not solicit proxies from mutual fund shareholders unless:

- a) in the case of solicitation by or on behalf of the management company of a mutual fund, a management proxy statement that complies with the provisions prescribed in the regulations as a separate document or as an appendix to the notice of the meeting; or
- b) in the case of any other solicitation a proxy statement that complies with the provisions prescribed in the regulations,

is sent, prior to or contemporaneously with the solicitation, by prepaid mail to the administrator, the auditor of the mutual fund and each mutual fund shareholder whose proxy is solicited at his latest address as shown on the records of the mutual fund complex.

To Distribute Material

5.01(4) A mutual fund complex shall send by prepaid mail to all shareholders of the mutual fund that forms part of the complex, any material relating to matters proposed to be discussed at a meeting required to be called under subsection (1), within five days of receipt of both a request that it do so and the material, if:

- a) the person making the request is the administrator or a mutual fund shareholder; and
- b) the mutual fund complex has received payment of an amount reasonably sufficient to defray the costs of handling and mailing such material and any other necessary expenditure in connection with the mailing; and
- c) in the case of a request by a mutual fund shareholder the mutual fund complex has not offered to supply a complete list of shareholders of the mutual fund that forms part of the complex to the requesting shareholder.

Preliminary Notice

5.01(5) At least forty days prior to any meeting at which a motion will be considered to replace the incumbent management company of a mutual fund whether proposed under section 8.02 or otherwise, the incumbent

management company of that mutual fund shall send a preliminary notice of meeting to all mutual fund shareholders stating the proposed date and the purpose of the meeting.

5.01(6) In addition to his rights under subsection (4), a mutual fund shareholder may, by advising the mutual fund complex within ten days after the mailing of the preliminary notice specified in subsection (5), require the mutual fund complex to send by prepaid mail to shareholders of the mutual fund that forms a part of the mutual fund complex, a statement of not more than one thousand words submitted by the mutual fund shareholder and specifically relating to the replacement of the management company proposed to be discussed at the meeting, the mailing of such statement to be made by the mutual fund complex not more than five days after receipt of the statement

Distribution of Statement

5.01(7) No mutual fund is required to distribute any submitted material or statement if it is libellous or irrelevant.

Exemption

5.01(8) No part of a mutual fund complex or any director thereof incurs any liability by reason only of circulating a statement or material in compliance with subsections (4) and (6).

Immunity

5.01(9) For the purposes of this section "solicit" and "solicitation" include:

Interpretation

- a) a request for a proxy whether or not accompanied by or included in a form of proxy;
- b) a request to execute or not to execute a form of proxy or to revoke a proxy; and
- c) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy;

but do not include,

- d) the sending or delivery of a form or proxy to the shareholder in response to an unsolicited request made by him or on his behalf; or
- e) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy.

5.01(10) A mutual fund complex need not distribute a statement under subsection (4) or subsection (6) if:

Exceptions

- a) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against any part of the mutual fund complex or its directors; or
- b) material containing substantially similar representations or recommendations was submitted to shareholders in a statement previously distributed with respect to the meeting.

| | |
|---------------------------------------|---|
| Application to Court | 5.01(11) Any person claiming to be aggrieved by any refusal to distribute a statement under subsection (6) or material under subsection (4) may apply to the court for an order requiring the statement or material to be distributed. |
| Idem | 5.01(12) A mutual fund complex which would otherwise be required to send out a statement under subsection (6) or material under subsection (4) may apply to the court for an order permitting the statement or material not to be sent. |
| Equal Voting Rights | 5.01(13) At every meeting called pursuant to this section, each mutual fund share and every other outstanding share of that mutual fund shall have the same voting rights. |
| 5.02 Reporting to Shareholders | |
| Fiscal Period | 5.02(1) A mutual fund shall have an annual fiscal period, herein referred to as its financial year, which shall not be changed without the consent of the administrator. |
| Annual Report | 5.02(2) A mutual fund complex shall send by prepaid mail to all shareholders of the mutual fund that forms a part of the complex, within forty-five days of the end of each financial year an annual report containing financial statements as prescribed by the regulations and reported on by the auditors of the mutual fund. |
| Semi-annual Report | 5.02(3) A mutual fund complex shall send by prepaid mail to all shareholders of the mutual fund that forms a part of the complex, within two hundred and twenty-eight days of the end of each financial year, financial statements, as prescribed by the regulations, such statements to be prepared as of a date not less than one hundred and eighty days after the end of the financial year. |
| Auditor's Report | 5.02(4) The auditor's report accompanying the annual report shall be in prescribed form and addressed to the mutual fund shareholders. |
| Semi-annual Report Certificate | 5.02(5) A report sent pursuant to subsection (3) shall be accompanied by a certificate in prescribed form addressed to the shareholders and signed by both the chief executive officer and the chief financial officer of the mutual fund or, if such officers do not exist, the corresponding officers of the management company of the mutual fund. |
| Quarterly Reports | 5.02(6) A mutual fund may publish or send to each of its shareholders quarterly financial reports but such reports shall conform to the same conditions as are required for semi-annual reports under subsections (3) and (5) to the extent financial information is included therein. |
| Filing of Reports | 5.02(7) The reports specified in subsections (2), (3) and (6) shall comply with the provisions of this Act relating to sales literature and the mutual fund |

complex shall file copies thereof with the administrator on or before the earlier of the day they are first published and the day they are sent to shareholders.

5.03 Voting Rights

5.03(1) A mutual fund shall not change its investment objectives or stated investment practices until the change is approved by the mutual fund shareholders under section 5.01 but the administrator may permit a change in the stated investment practices of a mutual fund without a vote if he is satisfied that the change is not material to the shareholders of the mutual fund.

Change of
Objectives
or Practices

5.03(2) A mutual fund complex shall not enter into, amend, assign or permit the assignment of a management contract or a distribution contract unless the contract or the amendment or assignment, as the case may be, has been approved by the mutual fund shareholders under section 5.01.

Assignment
of Management
Contract

5.03(3) If control of a management company or a distribution company which has a management contract or a distribution contract with a mutual fund is transferred then no compensation shall be paid or payable to the management company by that mutual fund with respect to the period after the transfer of control until the transfer is approved by the mutual fund shareholders under section 5.01.

Transfer of
Control

5.03(4) For the purposes of subsection (3) a transfer of control of a management company or a distribution company occurs only if the company is not listed on a stock exchange in Canada and:

Interpretation

- a) the beneficial ownership of more than fifty percent of the issued shares of such company, having full voting rights under all circumstances, is transferred from one person and his associates to another person and his associates; or
- b) if no person together with his associates beneficially owns more than fifty percent of the issued shares of the company having full voting rights under all circumstances, beneficial ownership of securities that in fact constitute control of the company is transferred from one person and his associates to another person and his associates.

5.03(5) A person interested in the entering into, amendment or assignment of a management contract or a distribution contract or the change of control of a management company or a distribution company, whether or not the change of control is a transfer of control within the meaning of subsection (4), may apply to the administrator for permission that this section does not apply to the proposed contract, amendment, assignment or change of control and the administrator shall so permit if he is satisfied:

Permission for
Non-compliance

- a) in the case of an amendment that it is not material; or
- b) that the contract, amendment or assignment of the contract in the manner proposed was clearly envisaged at the date the mutual fund was organized and the contract, amendment or assignment is not *prima facie* against the interests of the mutual fund shareholders; or

- c) that the proposed change of control would not be unfair to the mutual fund shareholders.

Administrative
Discretion

5.03(6) The administrator may require a mutual fund complex to call a meeting of mutual fund shareholders to approve any change in the control of the management company or the distribution company of the mutual fund that forms part of the complex other than a change which has been so approved or a change of control that the administrator has permitted under subsection (5) if the administrator is concerned that the change may make a significant difference to existing mutual fund shareholders and in default of approval by a majority of votes cast at the meeting the administrator may institute proceedings for the appointment of a receiver or a receiver and manager under subsection 11.07(4).

Notification

5.03(7) A distribution company or the management company of the mutual fund that forms part of a mutual fund complex shall, if it has knowledge thereof, notify the administrator of any proposed change in the control of the management company or a distribution company.

5.04 Delivery of Prospectus

Prospectus
Delivery

5.04 A mutual fund complex on request and without requiring payment of any fee shall furnish to a mutual fund shareholder or a prospective purchaser of shares of the mutual fund that forms a part of the mutual fund complex, a copy of the most recent prospectus for which a receipt has been obtained and any amendments thereto, or an annual report filed in lieu of a prospectus under subsection 3.06(5).

5.05 Notification of Redemption Rights

Sale of Con-
tractual Plans

5.05(1) Except with the consent of the administrator, a mutual fund complex shall not permit mutual fund shares of the mutual fund that forms a part of the complex to be sold pursuant to a contractual plan unless the contractual plan is sold by a distribution company that forms part of the complex or by an organization approved or authorized to sell the contractual plans by the distribution company.

Notice to
Planholder

5.05(2) If no payment has been received from a planholder during a period of six months, the mutual fund complex shall send to the planholder at his latest address shown on its books a statement or letter setting forth the redemption rights of the planholder, a clear statement of the procedure to be followed to effect redemption and a statement of the number of shares owned by the planholder together with any cash balances on hand, but this subsection does not apply if the contractual plan has been completed in accordance with its terms.

Contents
of Notice

5.05(3) The letter or statement referred to in subsection (2) may also include statements encouraging the planholder to complete the contractual plan in accordance with the terms of the plan or to modify the contractual plan to suit the circumstances of the planholder.

**PART VI—VALUATION, ISSUE, TRANSFER AND
REDEMPTION OF MUTUAL FUND SHARES**

6.01 Computation of Net Asset Value Per Share

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| 6.01(1) Subject to subsection (2) a mutual fund complex shall calculate a single net asset value per share of the outstanding mutual fund shares of the mutual fund that forms part of the complex on each business day unless the administrator consents to less frequent calculations. | Frequency of Calculation |
| 6.01(2) With the consent of the administrator, the net assets of a mutual fund may be determined differently in calculating net asset value per share for purposes of the issue price than in calculating net asset value per share for purposes of the redemption price but the different methods of determination shall be fully disclosed in each prospectus of the mutual fund and in each annual report of the mutual fund. | Issue Price and Redemption Price Valuation |
| 6.01(3) A mutual fund complex shall file with the administrator a detailed description of the method of computing the net asset value per share of the mutual fund that forms part of the complex and the description shall include the method of valuation for each type of portfolio asset proposed to be held by the fund, the timing of inclusions of purchases and sales of portfolio assets, the timing of inclusions and exclusions of mutual fund shares sold and redeemed, the treatment of tax liabilities and refundable taxes and the method of computing liabilities, including liabilities on short sales and with respect to puts or calls, where relevant, and the description shall comply with the regulations and shall otherwise be in accordance with generally accepted accounting practice. | Filing of Valuation System |
| 6.01(4) Each determination of net asset value per share shall be made on a consistent basis in conformity with the description filed under subsection (3). | Consistency |
| 6.01(5) A mutual fund shall not issue or redeem a mutual fund share except at the net asset value per share calculated under subsections (1) or (2). | Consideration |
| 6.01(6) The applicable net asset value per share used to calculate the issue price or the redemption price for a purchase or redemption of mutual fund shares shall be the net asset value per share determined as of the close of business on the calculation date or, if no determination is made on that date, then on the date of the immediately subsequent determination after that date. | Timing |
| 6.01(7) The calculation date referred to in subsection (6) shall be the day on which, or a day which is not more than two business days after the day on which, the mutual fund complex receives the order to purchase or the material required for redemption. | Calculation Date |

6.02 Secondary Marketing

Refusal to
Transfer

6.02(1) A mutual fund complex shall not permit the transfer of an outstanding mutual fund share until there has been filed with the complex a statutory declaration or affidavit signed by the proposed transferee of the mutual fund share stating that the proposed transfer has not been arranged through any person who regularly deals in securities as an agent or principal, but the affidavit or statutory declaration is not required if:

- a) the right to redeem the mutual fund share is then suspended; or
- b) the mutual fund complex is no longer distributing shares of the mutual fund to the public; or
- c) the administrator orders otherwise; or
- d) the shareholder of the mutual fund share proposed to be transferred has died.

Send out
Annual
Report

6.02(2) A mutual fund complex shall before entering or permitting to be entered on the transfer register of the mutual fund any transfer of any mutual fund share, send to the proposed transferee by prepaid mail a copy of the most recent annual, or semi-annual, report of the mutual fund but this subsection does not apply to transfers consequent upon the death of a shareholder.

Limited
Renunciation
Right

6.02(3) Where the mutual fund complex is no longer distributing shares of the mutual fund to the public and the administrator is of the opinion that a practice is being made of charging more than normal brokerage or similar transaction fees in connection with the purchase of shares of that mutual fund, he may order that the proposed transferee of any shares of that mutual fund may, at any time within seven days after the entry of the transfer in the transfer records of the mutual fund, renounce the purchase and receive back the full consideration, including brokerage and similar transaction fees, upon payment to the transferor of the decrease, if any, in the net asset value per share of the shares between the date of transfer and the date of exercise of the renunciation right and the order may include provisions for the allocation of the liability between the transferor and the recipient of the brokerage or other transaction fees with respect to the transaction.

Offence

6.02(4) A person who does not make a refund forthwith to the transferee as required under an order granted pursuant to subsection (3) shall be guilty of an offence.

Interpretation

6.02(5) Subsection (1) shall not apply in relation to a mutual fund share the transferor of which is a person who regularly deals in securities as an agent or principal if the mutual fund share was purchased by that person from the mutual fund complex.

6.03 Penalty for Early Redemption

Penalty for
Early Redemp-
tion

6.03(1) If a shareholder surrenders shares of a mutual fund for redemption within one hundred and eighty days after the last purchase from the mutual fund complex of shares in that mutual fund by him or an associate

of him, the mutual fund shall, in addition to any other fees payable by the mutual fund shareholder deduct from the redemption price otherwise payable and retain as part of the assets of the mutual fund an amount equal to:

- a) four percent, or such lesser percentage as may be prescribed by regulation, of the redemption price multiplied by the number of shares being redeemed that were purchased from the mutual fund complex within ninety days from the date of the surrender; plus
- b) two percent, or such lesser percentage as may be prescribed by regulation, of the redemption price multiplied by the number of shares being redeemed that were purchased from the mutual fund complex within one hundred and eighty days but not within ninety days of the date of the surrender.

6.03(2) In the determination of the date of purchase of mutual fund shares being redeemed, the mutual fund shares of the redeeming shareholder shall be considered together with those of persons associated with him and the mutual fund shares being redeemed shall be deemed to be derived from the most recently purchased of such mutual fund shares to the extent they have not previously been redeemed.

Associates
Included

6.03(3) Subsection (1) shall not apply if:

- a) the aggregate net asset value at the time of purchase of the mutual fund shares purchased by the redeeming shareholder and persons associated with him within one hundred and eighty days prior to the date of surrender was less than fifty thousand dollars; or
- b) the mutual fund shares surrendered for redemption were redemptions in the normal course under a pension, retirement or systematic withdrawal plan operated by the mutual fund complex; or
- c) the mutual fund shares surrendered for redemption were registered in the name of a person permitted to service contractual plans under subsection 10.03(1) and the mutual fund shares surrendered for redemption would qualify under paragraph (a) of this subsection if they had been registered in the name of their beneficial owner.

Exempted
Redemption

6.03(4) A mutual fund complex shall not be convicted of an offence for failing to deduct the amounts required under subsection (1) if it has adopted reasonable means to detect redemptions which would be subject to the deduction under subsection (1) and it has no knowledge that, in the particular circumstances, a deduction should have been made under subsection (1).

Defence

6.04 Satisfaction of Issue Price or Redemption Price by Delivery of Portfolio Securities

6.04(1) Except as otherwise provided in this section a mutual fund shall only accept cash or its equivalent as consideration for the issue of mutual fund shares and shall satisfy redemptions in cash or its equivalent.

Cash Con-
sideration

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|---|--|
| Permitted Investment as Consideration | 6.04(2) A mutual fund may, if permitted by its stated investment practices, issue mutual fund shares in exchange for permitted investments but the issue price multiplied by the number of the shares so issued shall not be more than the aggregate value that would have been attributed to the permitted investments received in exchange in the most recent determination of net asset value per share had they then formed part of the portfolio assets of the mutual fund. |
| Note in Annual Report | 6.04(3) A mutual fund that has issued mutual fund shares pursuant to subsection (2) shall note all transactions under that subsection in the next annual report. |
| Delivery of Permitted Investments on Redemption | <p>6.04(4) A mutual fund may, if permitted by its stated investment practices, deliver permitted investments instead of cash in satisfaction of a redemption but:</p> <ul style="list-style-type: none"> a) the permitted investments so delivered shall be valued for purposes of the delivery at an amount not greater than the aggregate of the amount attributed to them in the most recent determination of net asset value per share of the mutual fund and either one half the lowest published brokerage fees payable on the sale of such permitted investments or, in the absence of publication, an amount approved by the administrator as representing one-half the likely brokerage fees payable on the sale of such permitted investments; b) the prior written consent of the redeeming shareholder shall be obtained; and c) a list of the securities so delivered, together with details of the transactions shall be noted specifically in the next annual report. |
| No Restricted Investments | 6.04(5) A mutual fund shall not issue or redeem shares in exchange for restricted investments. |
| 6.05 Redemption Time Limit | |
| No Redemption Suspension | 6.05(1) A mutual fund shall not suspend or purport to suspend the right of mutual fund shareholders to redeem mutual fund shares except with the written consent of the administrator or in compliance with an order of a court. |
| Shareholder not a Creditor | 6.05(2) During the period when the redemption right is suspended under subsection (1), a shareholder of the mutual fund does not rank as a creditor against the assets of the mutual fund by reason of shares held by him being surrendered for redemption, regardless of the time at which the shares were so surrendered and such surrender shall be considered as not having been made for the purpose of this Act except that it shall be an adequate surrender for the purposes of section 9.05. |
| Pay Within Seven Days | 6.05(3) A mutual fund, unless the right to redeem its mutual fund shares is suspended, shall pay the redeeming shareholder for mutual fund shares |

surrendered for redemption within seven days of the receipt by the mutual fund complex of the material required to be completed by the shareholder.

6.05(4) The material required to be completed by a shareholder in order to surrender shares for redemption shall be mailed to the shareholder by the mutual fund complex of which the mutual fund forms part forthwith upon request.

Mailing
Material

6.05(5) The mutual fund complex shall mail a description of the material required under subsection (3) to a shareholder of the mutual fund that forms a part of the complex at the time he becomes a shareholder or, in the case of persons beneficially owning mutual fund shares registered in the name of another pursuant to a contractual plan, at the time the contractual plan is entered into.

Description
of Material

6.05(6) Notwithstanding subsection (3) where a fund on funds surrenders mutual fund shares for redemption the mutual fund to which the surrender is made shall not be required to redeem for the fund on funds more than one percent of the outstanding shares of the mutual fund in any thirty day period.

Exception

PART VII—GENERAL REQUIREMENTS GOVERNING THE OPERATION OF MANAGEMENT AND DISTRIBUTION COMPANIES

7.01 Bonding and Insurance

Required
Insurance

7.01(1) A mutual fund complex shall maintain fidelity, theft and other insurance as may be prescribed in the regulations or required by the administrator.

Notice of
Cancellation

7.01(2) A mutual fund complex shall ensure that each insurance policy entered into by it under subsection (1) provides that it cannot be cancelled without fourteen days prior notice being given to the administrator, unless the administrator specifically exempts the mutual fund complex from this requirement.

7.02 Retail Price Maintenance

Retail Price
Maintenance

7.02(1) A mutual fund complex shall not, by any means whatsoever, require or induce or attempt to require or induce any person who is not an employee of the mutual fund complex to sell, whether as agent or as principal, shares of the mutual fund that forms part of the complex to retail purchasers:

- a) at a specified price; or
- b) at a price not less than a minimum price; or
- c) with a sales charge specified by or not less than a minimum sales charge recommended by the mutual fund complex.

Refusals
to Deal

7.02(2) A mutual fund complex shall not refuse to sell a mutual fund share to a purchaser who acquires the share for resale or refuse to deal through an agent for the reason that the purchaser or agent has previously refused or refuses with respect to the shares he currently wishes to acquire or sell, to sell, resell or offer to resell such shares:

- a) at a specified price; or
- b) at a price not less than a minimum price; or
- c) with a sales charge specified by or not less than a minimum sales charge recommended by the mutual fund complex.

Defences

7.02(3) Notwithstanding subsections (1) and (2) a mutual fund complex may refuse to sell mutual fund shares to a purchaser or through an agent if it has cause to believe and does believe that the purchaser or agent, as the case may be:

- a) intends to operate a secondary market in the shares of the mutual fund;
- b) has made a practice of engaging in misleading advertising in respect of mutual fund shares;
- c) has made a practice of not providing the level of servicing that is desirable for mutual fund purchasers; or
- d) is engaging in any other practice that the regulations prohibit.

7.02(4) In this section “employee” means an individual holding a position under a contract of service with the mutual fund complex, regardless of whether the individual is remunerated by a salary or by commissions or both, or an individual prescribed in the regulations to be an employee but does not include any individual that the mutual fund complex does not supervise in relation to sales efforts directed to prospective purchasers of mutual fund shares or any individual over whom the mutual fund complex does not exercise control with respect to sales of mutual fund shares made by the individual.

Interpretation

7.02(5) Notwithstanding subsections (1) and (2) a mutual fund complex may:

- a) require that shares of a mutual fund that forms part of the complex shall not be sold at a price which is less than the issue price of the shares plus the amount, if any, charged and retained by the distribution company with respect to those shares if no portion thereof is available directly or indirectly for the benefit of the seller; and
- b) publish or permit to be published quotations of asked prices for mutual fund shares which quotations include sales charges.

Exception

7.03 Sales Charges

7.03(1) A mutual fund complex shall, before charging any purchaser a sales charge on the purchase of shares of the mutual fund that forms part of the mutual fund complex, file with the administrator a proposed schedule of maximum sales charges with respect to those mutual fund shares.

Filing Schedule of Charges

7.03(2) No sales charges shall be charged to any purchaser of shares of the mutual fund until the administrator is satisfied that the proposed schedule filed under subsection (1) is not unreasonable and thereafter the sales charges set forth in the proposed schedule shall not be exceeded in any distribution of those mutual fund shares by the mutual fund complex or by any other person who engages in their distribution to retail purchasers.

Maximum Sales Charge

7.03(3) The administrator shall, where he is not satisfied that the proposed maximum sales charges are not unreasonable, forthwith notify the mutual fund complex of that opinion and his reasons therefor and in arriving at his opinion the administrator shall consider any factors that are prescribed in the regulations and may, if he deems it appropriate, seek outside advice or comment with respect thereto.

Notification by Administrator

7.03(4) If the administrator does not notify the mutual fund complex under subsection (3) within twenty-one days after the filing of the proposed schedule of maximum sales charges he shall be deemed to be satisfied that the proposed sales charges are not unreasonable.

Deemed Acceptance

7.03(5) Within sixty days of receipt of notification under subsection (3) the mutual fund complex may apply to the court to determine the reason-

Court Application

ableness of the maximum sales charges to which the notification relates in accordance with the procedure set forth in section 7.05.

Increasing
Charges

7.03(6) If a mutual fund complex wishes to increase its maximum sales charges it shall file a proposed new schedule of maximum sales charges with the administrator which schedule shall be dealt with as set out in subsections (1) to (5) *mutatis mutandis*, but maximum sales charges in excess of those previously charged shall not be charged until the expiration of the twenty-one-day period specified in subsection (4) or, if a notification is given by the administrator under subsection (3) within the twenty-one-day period, until the administrator or the court is satisfied that the maximum sales charges set out in the schedule are not unreasonable and, in addition, shareholder approval thereof, if required pursuant to section 5.03, has been obtained.

Unreasonable
Charges

7.03(7) If the administrator at any time reaches the opinion that the schedule of maximum sales charges most recently deemed to be filed under subsection (11) or filed under subsection (1) is unreasonable he may request the mutual fund complex to file a proposed new schedule of maximum sales charges that he agrees are not unreasonable and in default by the mutual fund complex of filing within fourteen days of the request of a proposed new schedule of maximum sales charges which he agrees are not unreasonable he may apply to the court for a determination of a new schedule of maximum sales charges in accordance with the procedure specified in section 7.05.

Contractual
Plans

7.03(8) A mutual fund complex shall not induce or permit a purchaser or prospective purchaser of shares of the mutual fund that forms part of the complex to enter into a contractual plan unless:

- a) the payments to be made by the planholder other than the initial payment, are scheduled in equal amounts and all such payments less sales charges, insurance premiums, custodial fees and like service fees are to be applied forthwith to the purchase of shares of the mutual fund;
- b) the sales charges deducted from any payment scheduled to be made during the first twelve months of the plan do not exceed fifty percent of the payment;
- c) the aggregate sales charges to be levied against the total payments to be made under the contractual plan, expressed as a percentage of the total payments in no case exceed the maximum percentage sales charge permitted under the schedule for maximum sales charges of the mutual fund then in effect;
- d) the planholder has the right within the first twelve months of entering into the plan to surrender the plan and receive in cash the aggregate of:
 - i) the then current redemption price of the number of mutual fund shares acquired to the date of surrender under the plan, and
 - ii) an amount from a distribution company equal to that part of the sales charges paid to the date of surrender that exceeds twenty percent of the gross payments made by the planholder;

- e) the plan complies with such other requirements including restrictions or limitations as to service fees, as may be prescribed by the regulations; and
- f) the distribution company specified in paragraph (d)ii) and the mutual fund comply with the minimum capital requirements prescribed in this Act or in the regulations.

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| 7.03(9) A mutual fund shall not pay a commission on the sale of its mutual fund shares. | Commissions |
| 7.03(10) Where a fund on funds, or a mutual fund which purchases securities of only one person as permitted under paragraph 4.01(6)e), files a schedule under subsection (1) such schedule shall clearly indicate the range of maximum sales charges involved not only directly to the purchaser of shares of such mutual fund but including the maximum sales charges involved in purchasing shares in the underlying mutual funds or subsidiary. | Fund on Funds |
| 7.03(11) A mutual fund that registers under section 2.03 within one year after the date upon which this Act becomes effective shall be deemed to have filed a proposed schedule of maximum sales charges twenty-two days before such date of registration, which maximum sales charges shall be those charged by the mutual fund complex immediately prior to registration. | Pre-existing Schedule |
| 7.04 Management Fees | |
| 7.04(1) A mutual fund complex shall, before entering into a management contract, file with the administrator a schedule of proposed management fees, including the detailed method of calculation of, and the time and method of charging, the fees against the mutual fund that forms part of the mutual fund complex. | Filing Schedule of Fees |
| 7.04(2) No management fees shall be paid under a management contract until the administrator is satisfied that the proposed management fees filed under subsection (1) are not unreasonable. | Administrator is Satisfied |
| 7.04(3) The administrator shall, where he is not satisfied that the proposed management fees are not unreasonable, forthwith notify the mutual fund complex of that opinion and his reasons therefor and in arriving at his opinion the administrator shall consider any factors that are prescribed in the regulations and may, if he deems it appropriate, seek outside advice or comment with respect thereto. | Notification by Administrator |
| 7.04(4) If the administrator does not notify the mutual fund complex under subsection (3) within twenty-one days after the filing of the proposed schedule of management fees he shall be deemed to be satisfied that the management fees are not unreasonable. | Deemed Acceptance |
| 7.04(5) Within sixty days after the receipt of notification under subsection (4) the mutual fund complex may apply to the court to determine the | Court Application |

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| | <p>reasonableness of the management fees to which the schedule relates in accordance with the procedure set forth in section 7.05.</p> |
| Changing Fees | <p>7.04(6) A management company shall, before agreeing to change the existing management fees included in a management contract, file with the administrator a proposed amendment to the contract specifying the new management fees proposed which amendment shall be dealt with as set out in subsections (1) to (5) <i>mutatis mutandis</i> but no management fees in excess of those previously charged shall be charged until the expiration of the twenty-one day period specified in subsection (4) or if a notification is given by the administrator under subsection (3) within the twenty-one day period, until either the administrator or the court is satisfied that the management fee structure set out in the proposed amendment is not unreasonable, and, in addition, shareholder approval thereof, if required pursuant to section 5.03 has been obtained.</p> |
| Unreasonable Fees | <p>7.04(7) If the administrator at any time reaches the opinion that the schedule of management fees most recently deemed to be filed under subsection (9) or filed under subsection (1) is unreasonable he may request the mutual fund and the management company to file a new proposed schedule of management fees which he agrees are not unreasonable and in default by the management company of filing within fourteen days of the request a schedule which the administrator agrees is not unreasonable the administrator may apply to the court for a determination of a new schedule of management fees in accordance with the procedure specified in section 7.05.</p> |
| Fund on Funds | <p>7.04(8) Where a fund on funds or a mutual fund which purchases securities of only one person as permitted by paragraph 4.01(6)e), files a schedule under subsection (1) such schedule shall clearly indicate the range of management fees involved not only directly to the filing mutual fund but including the management fees charged to the underlying mutual fund or subsidiary.</p> |
| Pre-existing Schedule | <p>7.04(9) A mutual fund that registers under section 2.03 within one year after the date upon which this Act becomes effective shall be deemed to have filed on behalf of the mutual fund complex of which it forms a part, a proposed schedule of management fees twenty-two days before such date of registration, which management fees shall be those charged to the mutual fund immediately prior to registration.</p> |
| <p>7.05 Proceedings in Court for Reasonable Management Fees and Sales Charges</p> | |
| Jurisdiction of the Court | <p>7.05(1) The court shall have jurisdiction to hear and determine applications made under sections 7.03 and 7.04 hereof.</p> |
| Consideration by Court | <p>7.05(2) In determining the reasonableness of proposed maximum sales charges and proposed management fees the court shall consider those factors prescribed in the regulations that the administrator is to consider in</p> |

satisfying himself as to the reasonableness of such charges or fees together with any other factors that the court deems appropriate.

7.05(3) The court may, where it is of the opinion that the appointment would materially assist in the conduct of a trial under this section, appoint any person who appears to the court to have specialized, expert or technical knowledge to assist the court in determining the reasonableness of the proposed maximum sales charges or management fees.

Expert

7.05(4) Except in cases where the administrator initiates proceedings under subsections 7.03(7) or 7.04(7), the court shall not be required to set reasonable maximum sales charges or reasonable management fees but only to state whether the proposed charges or fees are, or are not, reasonable.

Determination
by Court

7.06 Offence for Non-conventional Funds to Solicit Outside Canada

7.06 A mutual fund complex shall not solicit or knowingly permit the solicitation of prospective purchasers of mutual fund shares of a non-conventional mutual fund incorporated or organized in Canada, if the prospective purchasers are not at the time of the solicitation physically present in Canada or, in the case of persons other than individuals, resident in Canada.

Solicitation
Outside
Canada

7.07 Standards for Management

7.07(1) Every person responsible for the management of a mutual fund to which this Act applies shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Standard
of Care

7.07(2) For the purposes of subsection (1) a person is responsible for the management of a mutual fund if he has a legal power or right to control the investments made by the mutual fund or if in fact he is able to do so, either alone or together with a small group of others.

Interpretation

7.08 Detection of Improper Trading

7.08(1) A mutual fund complex shall report to the administrator within ten days after the end of the month in which it occurs:

Report on
Prohibited
Transactions

- a) every acquisition by the mutual fund that forms part of the complex of securities from or disposition by that mutual fund of securities to a person in which the mutual fund is prohibited from investing under section 4.02; and
- b) every purchase or sale in consequence of which a fee or other compensation is to the knowledge of the mutual fund complex, received by an associate of the mutual fund, management

company or distribution company other than reasonable brokerage fees or fees paid pursuant to a contract described in the most recent prospectus for which a receipt has been obtained and any amendments thereto, or in the most recent annual report filed in lieu of a prospectus under subsection 3.06(5).

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| Exemption | 7.08(2) The administrator may, on and subject to such conditions as he deems appropriate, exempt any mutual fund complex from reporting any transaction or class of transaction otherwise required to be reported under subsection (1). |
| List | 7.08(3) A mutual fund complex shall prepare and, if required by the administrator, file with the administrator within thirty days of the end of the financial year of the mutual fund, a list of portfolio transactions made by the mutual fund in that year including the date of each transaction, a description of the asset purchased or sold and the price at which each transaction took place. |
| Sending out List | 7.08(4) Subject to subsection (7), a mutual fund complex shall send to every director of the management company, distribution company and mutual fund that forms part of the mutual fund complex a copy of the list prepared under subsection (3). |
| Recipient to Advise | 7.08(5) Within thirty days after receipt of the list sent under subsection (4) all of the persons receiving the list shall advise the mutual fund in writing and, if required by the administrator, shall also so advise the administrator of any transactions to which they or their spouse or infant children were parties if such transactions were in the same security or class of security of an organization on the list received and were made within sixty days of the date of the transaction in such security or class of security as shown on the list. |
| Presumption | 7.08(6) Any transaction required to be reported under subsection (5) and not so reported shall, <i>prima facie</i> , be deemed to have been made in contravention of section 11.04. |
| Exemption | 7.08(7) The administrator may, on and subject to such conditions as he deems appropriate exempt any mutual fund complex and directors thereof from the provisions of subsections (4) and (5) if, in the opinion of the administrator, other satisfactory means have been adopted to detect transactions carried out in contravention of section 11.04. |

PART VIII—MANAGEMENT AND DISTRIBUTION CONTRACTS

8.01 Content of Management and Distribution Contracts

8.01(1) Every distribution contract and every management contract shall be in writing and shall:

Management &
Distribution
Contracts

- a) describe precisely the amount or the method of determination of any management fee or other compensation to be paid thereunder and provide that no compensation not contemplated specifically thereunder shall be paid;
- b) provide in substance, that the contract may be terminated at any time by the mutual fund without payment of any penalty;
- c) specify the services to be performed or the obligations undertaken thereunder for the benefit of the mutual fund, mutual fund shareholders and prospective mutual fund shareholders;
- d) provide that the distribution company or the management company, as the case may be, shall compensate the mutual fund for all services and tangible benefits, including literature, provided to the distribution company or the management company at the expense of the mutual fund other than services or benefits permitted in the regulations;
- e) specify for purposes of section 2.02 the scope of the authority and responsibility of the management company or the distribution company, as the case may be, for compliance with the requirements of this Act applicable to mutual fund complexes;
- f) provide that the contract may not be assigned by the management company or the distribution company, as the case may be, without the consent of the mutual fund and the consent of its shareholders if required under section 5.03;
- g) provide that the contract, if for a fixed term, shall be renewable at the option of the mutual fund unless the management company or distribution company, as the case may be, has given the mutual fund and the administrator at least six months prior notice of its desire not to renew the contract;
- h) provide that the management company or the distribution company, as the case may be, will co-operate with the administrator to attempt to arrange for a successor management company or distribution company if notice is given under paragraph (g);
- i) provide that the contract may not be materially amended without the consent of the shareholders if required under section 5.03;
- j) provide that the administrator may require the contract to be terminated in the event that the management company or distribution company, as the case may be, does not maintain the minimum capital requirements prescribed in the regulations; and
- k) comply with such other provisions as may be prescribed in the regulations.

8.01(2) No person shall enter into a management contract or a distribution contract unless the proposed management company or the proposed

Minimum
Capitalization

distribution company, as the case may be, under the proposed contract satisfies the minimum capital requirements prescribed in the regulations.

8.02 Nomination of New Management Company

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| Shareholder may Nominate Alternate Management Company | <p>8.02(1) A mutual fund shareholder may nominate an alternate to the incumbent management company to be the management company of the mutual fund, provided that the proposed management contract under which the alternate would operate and a proposed distribution contract with the proposed distribution company has been approved by the alternate and filed with the administrator at least fourteen days prior to the nomination and the administrator has not advised the alternate that he disapproves of either of the proposed contracts.</p> |
| Confidentiality | <p>8.02(2) The administrator shall not disclose the name of the proposed alternate or the contents of the proposed contracts filed under subsection (1) except to any persons whom the administrator feels under the circumstances could assist him in determining whether he disapproves of the proposed contracts.</p> |
| Nominee to Satisfy Escrow | <p>8.02(3) A person who permits himself to be nominated as a management company for a mutual fund pursuant to subsection (1) shall make arrangements with the administrator before nomination to deposit cash or securities sufficient to satisfy the escrow requirements of subsection 3.05(2) in the event of the nomination resulting in the election of that person, and shall also deposit with the administrator agreements relating to mutual fund shares sufficient to satisfy the requirements of subsection 3.05(3).</p> |
| Return Deposits | <p>8.02(4) The administrator shall return all deposits made under subsection (3) in the event that the alternate does not become the management company of the mutual fund.</p> |
| Nomination | <p>8.02(5) The nominating shareholder shall transmit to the incumbent management company a written statement in support of the proposed management company and that statement shall constitute the nomination referred to in subsection (1).</p> |
| Mailing of Statement and Prelim- inary Notice | <p>8.02(6) Upon receipt of the statement, the incumbent management company shall call a meeting of the mutual fund shareholders in accordance with section 5.01 and shall, subject to the provisions of subsections 5.01(4) and 5.01(7), send to the shareholders of the mutual fund a copy of the statement transmitted under subsection (5) of this section.</p> |
| Management Statement | <p>8.02(7) The incumbent management company may also send to shareholders of the mutual fund at the expense of the mutual fund, a statement of reasonable length setting forth its views and replying to any claims made by the nominating shareholder in the statement transmitted under subsection (5).</p> |

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| <p>8.02(8) If at the meeting called pursuant to sections 5.01 and 8.02 over two-thirds of the votes cast are in favour of the incumbent management company being removed then, subject to subsection (10), the existing management contract shall be abrogated.</p> | <p>Two-thirds against Incumbent</p> |
| <p>8.02(9) The proposed management company may be appointed by a majority of the votes cast by mutual fund shareholders at the meeting in favour of the proposed new management contract but only after:</p> <ul style="list-style-type: none"> a) a vote under subsection (8) has been taken; and b) the requirements of subsection (10) have been completed. | <p>Majority vote for new Man- agement Company</p> |
| <p>8.02(10) The existing management contract shall not be abrogated under subsection (8) until a new management company acting under a new management contract has been approved but in the event of such approval the new management contract shall be substituted for the existing management contract.</p> | <p>Substitution of new Manager</p> |
| <p>8.02(11) Neither the incumbent management company or distribution company nor any associate of either of them shall vote or cause to be voted any shares of the mutual fund beneficially owned by such management company or distribution company or associate of either of them on any matter arising under this section.</p> | <p>Voting by Incumbent</p> |
| <p>8.02(12) Neither the proposed management company or distribution company nor an associate of either of them nor anyone who would be an associate of the proposed management company or distribution company if they were the management company and distribution company of the mutual fund shall vote or cause to be voted any shares beneficially owned by any of them on any matter arising under this section.</p> | <p>Alternate not to vote</p> |
| <p>8.02(13) No proposed management company shall be nominated hereunder unless it agrees to or nominates another who agrees to:</p> <ul style="list-style-type: none"> a) become the distribution company of the mutual fund in accordance with a distribution contract filed under subsection (1); and b) assume the responsibility of the incumbent distribution company with respect to outstanding contractual plans for investment in shares of the mutual fund. | <p>Alternate Distribution Company</p> |
| <p>8.02(14) If the existing management contract is abrogated hereunder, the existing distribution contract shall likewise be abrogated and the new distribution company shall become the distribution company of the mutual fund in accordance with the distribution contract filed under subsection (1).</p> | <p>Distribution Contract</p> |
| <p>8.02(15) Without the consent of the incumbent management company or of the administrator, no nomination shall be made by any shareholder under subsection (5) within two years of a nomination having been made by any shareholder, whether or not the proposed alternates are different.</p> | <p>Frequency</p> |

PART IX—DISTRIBUTION OF MUTAL FUND SHARES

9.01 Delivery of Summary Prospectus

Delivery of
Summary
Prospectus

9.01(1) A mutual fund complex shall not issue or sell mutual fund shares unless it first delivers or requires to be delivered to each prospective purchaser the most recent summary prospectus for which a receipt has been issued by the administrator relating to those mutual fund shares.

Delivery of
Summary
Prospectus

9.01(2) A mutual fund complex shall deliver or require to be delivered the summary prospectus to a prospective purchaser of mutual fund shares concurrently with or prior to the first delivery of sales literature by the mutual fund complex, or by a person who derives his authority from the mutual fund complex, to that prospective purchaser.

Interpretation

9.01(3) For the purposes of this section the words “prospective purchaser” include retail purchasers from all persons engaged in the distribution of mutual fund shares which have not previously been distributed.

Unsolicited
Exception

9.01(4) Subsection (1) does not apply to a prospective purchaser who has not been directly contacted with a view to purchasing mutual fund shares either by the mutual fund complex or by a person who derives his authority from the mutual fund complex.

Interpretation

9.01(5) For the purposes of subsection (4) direct contact does not include the dissemination of advertising material by television, radio, newspapers or magazines nor the distribution of sales literature pursuant to general mailings or direct deliveries to the residences of persons other than specified addressees.

Distributor
to Deliver

9.01(6) A person who engages in the distribution to retail purchasers of shares of a mutual fund which have not previously been distributed, otherwise than as part of the mutual fund complex of which that mutual fund forms part, shall deliver or require to be delivered the most recent summary prospectus for which a receipt has been issued relating to those mutual fund shares to prospective purchasers from him as if he were part of the mutual fund complex.

Best Efforts

9.01(7) It is a defence to any alleged contravention of subsection (1) if the accused part of the mutual fund complex has by contract or otherwise, required another person to deliver the summary prospectus and that other person does not deliver or require to be delivered a summary prospectus to prospective purchasers.

Prohibition

9.01(8) Where the administrator is satisfied that a person has contravened the intent of this section with respect to the delivery of a summary prospectus to a prospective purchaser of mutual fund shares of any mutual fund, the administrator may prohibit the distribution company included in the mutual fund complex of which that mutual fund forms part or any other

person from selling shares of that mutual fund to or through that person except on terms and conditions acceptable to the administrator.

9.02 Confirmation of Purchase

9.02(1) Except as provided in subsection (5), forthwith after the sale of mutual fund shares the mutual fund complex shall send to the purchaser a confirmation of purchase complying with the regulations and specifying in respect of that sale:

Confirmation

- a) the total amount paid by the purchaser to the mutual fund and the distribution company;
- b) the amount of each deduction made with an appropriate notation of the reason for the deduction;
- c) the number of shares purchased;
- d) the name of the salesman, if any;
- e) a brief description of the redemption rights and fees, unless previously sent to the purchaser; and
- f) a statement of the renunciation rights, unless previously sent to the purchaser.

9.02(2) The first confirmation of purchase sent to a contractual plan purchaser shall comply with subsection (1) but subsequent confirmations of purchase need only include:

Contractual Plan Confirmation

- a) a statement of the total amount of the contribution being acknowledged;
- b) the total number of shares held under the contractual plan;
- c) the amount of each deduction made with an appropriate notification of the reason for the deduction; and
- d) a brief explanation of future charges to be made under the contractual plan.

9.02(3) The form of confirmation of purchase proposed to be used under subsections (1) and (2) shall be filed with the administrator at least fourteen days prior to being sent to a purchaser and shall not be used if the administrator notifies the mutual fund complex that the form is not in accordance with the statutory requirements or is otherwise unacceptable.

Filing of Proposed Forms

9.02(4) Notwithstanding subsections (1) and (2) hereof, the regulations may provide that the confirmation of purchase may consist of more than one document.

Regulations

9.02(5) When a person other than the mutual fund or a distribution company of that mutual fund engages in the sale to retail purchasers of shares of that mutual fund which have not previously been distributed, that person shall send or require to be sent the confirmation of purchase specified in subsection (1).

Retail Dealers

9.02(6) Where the administrator is satisfied that a person has contravened the intent of this section with respect to the delivery of a confirmation of purchase of shares to a purchaser, the administrator may prohibit the

Prohibition

distribution company included in the mutual fund complex of which that mutual fund forms part or any other person from selling shares to or through that person except on such terms and conditions acceptable to the administrator.

Receipt of
Mail

9.02(7) A confirmation of purchase sent by prepaid mail is, for the purposes of this section and section 9.05, deemed conclusively to have been received in the ordinary course of mail.

9.03 Sales Personnel

Salesmen

9.03(1) A mutual fund complex shall use its best efforts to prevent a person from soliciting purchasers for mutual fund shares of the mutual fund that forms part of the complex unless that person is registered as a salesman with the administrator or is registered with or licensed by the appropriate provincial authorities of each province in which that person proposes to trade in mutual fund shares.

Interpretation

9.03(2) For the purposes of subsection (1) a person who offers for sale mutual fund shares on the basis that no sales charge will be payable with respect thereto shall be deemed until the contrary is established not to be soliciting purchasers for those shares and every person who offers for sale mutual fund shares on the basis that a sales charge will be payable with respect thereto shall be deemed to be soliciting purchasers for those shares.

Interpretation

9.03(3) For the purposes of this section "solicitation" does not include the dissemination of advertising material by television, radio, newspaper or magazines nor the distribution of sales literature pursuant to general mailings or direct deliveries to the residences of persons other than specified addressees.

Exemptions

9.03(4) Notwithstanding the provisions of subsection (1) a mutual fund complex may permit a person not registered as a salesman to solicit purchasers for mutual fund shares if the salesman is exempted from registration by the regulations.

Registration

9.03(5) Notwithstanding subsections (1) and (2) any person engaged in the solicitation of purchasers for mutual fund shares may be required to register as a salesman with the administrator if the regulations so prescribe.

To Grant
Registration

9.03(6) The administrator shall unless he has determined to rely entirely on provincial registrations grant registration or renewal of registration to an applicant for registration as a salesman where in the opinion of the administrator the applicant is suitable for registration and the proposed registration is not objectionable.

Hearing

9.03(7) The administrator shall not refuse to grant or refuse to renew registration of a person as a salesman without giving the applicant an opportunity to be heard.

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| 9.03(8) The administrator may in his discretion restrict the registration of a salesman by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration. | Restriction on Registration |
| 9.03(9) The administrator, after giving the registrant an opportunity to be heard, shall suspend or cancel any registration of a salesman where he is satisfied such action is in the public interest. | Suspension or Cancellation |
| 9.03(10) Where the delay necessary for a hearing under subsection (9) would, in the opinion of the administrator, be prejudicial to the public interest, the administrator may suspend the registration of a salesman without giving the registrant an opportunity to be heard, in which case he shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the administrator within fifteen days of the date of the suspension. | Delay Prejudicial |
| 9.03(11) The administrator may refuse registration as a salesman to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration unless at the time of the application the individual is registered in a corresponding capacity in the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the administrator, otherwise suitable for registration. | Non-Canadian Individuals |
| 9.03(12) The administrator may refuse registration to a corporation or partnership if every director or every partner has not been a resident of Canada for at least one year immediately prior to the date of application for registration unless at the time of such application he is registered in a corresponding capacity in the jurisdiction in which the director or partner last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the administrator, otherwise suitable for registration. | Non-Canadian Organizations |
| 9.04 Sales Literature | |
| 9.04(1) A mutual fund complex shall not itself distribute or disseminate and shall endeavour to prevent the distribution or dissemination by others of any sales literature or advertising material concerning shares of the mutual fund that forms part of the complex unless the literature or material complies with the limitations and guidelines prescribed in the regulations for non-conventional mutual funds or for conventional mutual funds, as the case may be. | Sales Literature Distribution |
| 9.04(2) The administrator may require a mutual fund complex, a) to file copies of all sales literature used at the date of the request to solicit orders for shares of the mutual fund that forms part of the complex; or b) to file proposed sales literature or advertising material at least fourteen days prior to distribution or dissemination, or authorizing | Required Filing |

the distribution or dissemination, of the literature or material to prospective purchasers of the shares of the mutual fund that forms part of the complex.

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| Notification | 9.04(3) If the administrator is satisfied that any sales literature used by a mutual fund complex does not comply with the limitations or guidelines or is likely to mislead prospective purchasers the administrator shall so notify the mutual fund complex and he may require that after such notification the mutual fund complex shall not use or authorize the use of sales literature as described in the notice without the prior written consent of the administrator. |
| Contents | 9.04(4) A mutual fund complex shall include or require to be included in sales literature concerning shares of the mutual fund that forms part of the complex, that is distributed or authorized to be distributed to prospective purchasers, any information concerning the management expense ratio and maximum sales charges of that mutual fund that is prescribed by the regulations and shall endeavour to ensure that the information is presented in such a manner that the prospective purchaser is made specifically aware of it. |
| Receipt Required | 9.04(5) A mutual fund complex shall not advertise on television or radio unless the mutual fund that forms part of the complex is a conventional mutual fund and a transcription of the proposed advertisement has been filed with the administrator and a receipt therefor obtained. |
| Issue of Receipt | 9.04(6) The administrator shall issue a receipt for any proposed advertising material a transcription of which has been filed under subsection (5) unless, in his opinion, the advertisement is likely to mislead prospective purchasers or does not comply with the guidelines prescribed in the regulations. |
| Filing | 9.04(7) A mutual fund complex shall not disseminate or authorize the dissemination of advertising material concerning shares of the mutual fund that forms part of the complex until a copy of the advertising material has been filed with the administrator. |

9.05 Renunciation Rights

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| Contractual Plan Renunciation | 9.05(1) A purchaser of mutual fund shares from a mutual fund complex pursuant to a contractual plan may, where the amount contemplated to be paid or actually paid under the plan within one year from the initial payment under the plan does not exceed fifty thousand dollars, by delivering a notice to the mutual fund complex within sixty days after receipt of the first confirmation of purchase relating to the plan renounce all purchases made by him pursuant to the plan up to the date of the notice. |
| Lump sum Purchase Renunciation | 9.05(2) A purchaser of mutual fund shares from a mutual fund complex, other than pursuant to a contractual plan, may, where the amount actually |

paid for all purchases by him of shares issued by the same mutual fund within the preceeding year does not exceed fifty thousand dollars, renounce any such purchase by delivering a notice to the mutual fund complex within seven days after receipt of the confirmation for that purchase.

9.05(3) Upon surrender of the shares to which the notice delivered under subsection (1) or (2) relates, the mutual fund complex shall refund or cause to be refunded to the purchaser the amount of sales charges allocable to the purchases and in addition the mutual fund that forms part of the complex shall redeem the shares but shall only pay to the purchaser with respect to the redemption an amount which is the lesser of the redemption price of the shares to which the notice relates, as of the date of its receipt, or the aggregate of the issue prices of the shares at the dates of their purchase.

Refund

9.05(4) For the purposes of subsections (1) or (2) a notice is delivered only when actually received in writing or by telegram.

Delivery

9.05(5) If any renunciation right under subsections (1) or (2) is exercised at a time when the right to surrender shares of that mutual fund for redemption is suspended the mutual fund complex shall nevertheless refund the sales charges but the mutual fund shall not be required to make the payment otherwise required under subsection (3) until the suspension of the redemption right is no longer effective.

Payment where
Redemption
Right Suspended

9.06 Supporting Staff for Sales Organizations

9.06(1) A mutual fund complex shall provide adequate supporting and supervisory staff for its sales force to ensure that the provisions of this Act are complied with.

Support Staff

9.06(2) Where the administrator is satisfied that the supporting and supervisory staff of any distribution company is not adequate the administrator may so notify the mutual fund complex and thereafter, until the administrator consents in writing, shares of the mutual fund shall not be distributed to the public except to complete existing contractual plans.

Inadequate
Support Staff

9.06(3) For the purposes of subsection (2) the administrator in considering the adequacy of the supporting and supervisory staff may consider the number of redemptions experienced by the mutual fund, the number of shareholders who have exercised renunciation rights, the delinquency rate on contractual plans, complaints received from purchasers or potential purchasers and other criteria prescribed in the regulations.

Considerations
for Administrator

PART X—CUSTODIAL FUNCTIONS

10.01 Custodial Arrangements (Assets)

Custodian of
Portfolio
Assets

10.01(1) A mutual fund complex shall keep the portfolio assets of the mutual fund that forms part of the complex in Canada in the custody of one or more qualified custodians pursuant to a custodial agreement that complies with subsection (5).

Qualification

10.01(2) For the purposes of this section a qualified custodian is a chartered bank, trust company or other financial institution prescribed in the regulations that has a net worth, determined in accordance with the regulations, of over one million dollars.

Exemption

10.01(3) The administrator may exempt a mutual fund complex wholly or partially from the requirements of subsection (1) on such terms and conditions as he may impose.

Cash

10.01(4) Subject to any requirements prescribed in the regulations, a mutual fund may deposit cash in a chartered bank or trust company notwithstanding that no custodial agreement has been entered into with such bank or trust company.

Contents of
Agreement

10.01(5) A custodial agreement shall be in writing and shall:

- a) provide a detailed statement of the circumstances in which portfolio assets of the mutual fund may be released from custody;
- b) specify the nature of proof which the custodian shall demand before releasing portfolio assets of the mutual fund;
- c) provide that the custodian is liable, unless the custodian proves that any loss was not the result of negligence on his part, for any loss occasioned if portfolio assets are released except in accordance with the release provisions contained in the custodial agreement unless:
 - i) two officers of the management company or mutual fund sign the request indicating the reason why the release provisions cannot be complied with expeditiously, and
 - ii) the custodian forthwith advises the administrator and another officer of the mutual fund of the release proposed to be made;
- d) provide that portfolio assets deposited with the custodian shall, where feasible, be registered in the name of the custodian or of a nominee used by the custodian for the registration of securities;
- e) provide that the custodian shall not permit any portfolio assets subject to the custodial agreement to be charged as security for indebtedness to or of the custodian, whether by way of lien, pledge or otherwise;
- f) provide that all changes in the custodial agreement shall be approved by the mutual fund shareholders if so required by the administrator;

- g) provide that the custodian shall not own beneficially any shares of the management company or distribution companies of the mutual fund without the consent of the administrator;
- h) provide that the custodial agreement shall not have a fixed termination date and shall not be terminated by the custodian on less than three months prior written notice, a copy of which notice shall be filed forthwith with the administrator; and
- i) provide for any other matters prescribed in the regulations.

10.01(6) A mutual fund complex shall file a copy of every custodial agreement with the administrator at the time of registration of the mutual fund that forms part of the complex and shall file with the administrator a copy of any proposed change in such agreement at least fourteen days before such change is proposed to be implemented. File

10.01(7) The administrator may require a mutual fund complex to furnish a written undertaking from a non-resident custodian of portfolio assets of the mutual fund that forms part of the complex to comply with the provisions of this Act. Undertaking

10.01(8) The administrator may require that the mutual fund obtain approval from the mutual fund shareholders under section 5.01 before implementation of a change in a custodial agreement filed under subsection (6) hereof. Shareholder Approval

10.01(9) Portfolio assets subject to a custodial agreement shall not be charged as security for indebtedness to or of the custodian. Portfolio Assets not Security

10.01(10) A custodian of portfolio assets of a mutual fund shall not own beneficially any shares of the management company or distribution companies of the mutual fund without the consent of the administrator. Custodian cannot own shares of Management Company

10.02 Custodial Arrangements (Mutual Fund Shares)

10.02(1) A mutual fund complex shall not issue shares of the mutual fund that forms part of the complex unless a record of the owners of all mutual fund shares sold, which record is referred to in this section as a "share register", is maintained by the mutual fund complex or in accordance with a servicing arrangement entered into by the mutual fund complex that is satisfactory to the administrator. Share Register

10.02(2) A mutual fund complex shall file with the administrator an agreement or other document setting forth any arrangements to which a part of the mutual fund complex is a party, made concerning any mutual fund shares, the ownership of which is to be entered on the share register in the name of the distribution company or a nominee of the distribution company that forms part of the mutual fund complex. Nominee Agreement

10.02(3) An agreement or other document filed under subsection (2) shall: Contents of Agreement

- a) provide for the entry on a register to be maintained by the distribution company or its nominee of the names and addresses of the beneficial owners of the mutual fund shares issued in the circumstances contemplated by the agreement or other document, or of persons holding the shares on their behalf pursuant to arrangements to which no part of the mutual fund complex was a party;
- b) provide that the mutual fund shares held by the distribution company or its nominee pursuant to the agreement shall not be subject to any lien for fees or charges owing except service fees clearly specified in the agreement;
- c) require that copies of all material sent generally to mutual fund shareholders listed on the share register be sent to the registered owners of mutual fund shares as shown on the register kept by the distribution company or its nominee;
- d) prohibit voting of mutual fund shares registered in the name of the distribution company or its nominee except on the direction of the registered owners;
- e) require procedures to be followed which ensure a reasonable opportunity for the registered owners to give directions concerning the voting of mutual fund shares registered in their names; and
- f) comply with such other provisions as may be prescribed in the regulations.

Other
Dealers

10.02(4) If a person other than the distribution company of the mutual fund sells mutual fund shares on a basis similar to that described in subsection (2) the person shall file with the administrator an agreement which complies with the requirements of subsection (3).

Compliance

10.02(5) A distribution company, a person described in subsection (4) and the nominees of either of them shall each comply with all the terms of any agreement filed under subsections (2) or (4) to which that person is a party.

10.03 Contractual Plan Sponsors

Servicing
Contractual
Plans

10.03(1) A person shall not service contractual plans for a fee unless that person:

- a) is registered with the administrator as a contractual plan sponsor in accordance with the regulations, or
- b) is a distribution company of the mutual fund of which shares are sold under those contractual plans, a chartered bank or a trust company whether provincially or federally chartered; and

has entered into a distribution contract or a written contract in prescribed form with the mutual fund complex of which the mutual fund whose shares are sold under the contractual plans forms part.

Interpretation

10.03(2) For the purposes of this section “service” includes:

- a) the accepting or arranging for the acceptance of the payments made under a contractual plan;

- b) the disbursing or directing the disbursement of the payments made under a contractual plan; and
- c) the keeping or arranging for the custody of mutual fund shares purchased or payments made therefor.

10.03(3) A person shall not be considered to be servicing a contractual plan if he is merely keeping records or performing custodial functions delegated to him either by a contractual plan sponsor registered under this Act or by a person referred to in paragraph (b) of subsection (1). Exception

10.04 Commingling

10.04(1) Except as permitted under subsection 10.01(4), a mutual fund complex shall not commingle, and shall not enter into any arrangement which permits another person to commingle, assets belonging to the mutual fund that forms part of the complex with assets of any person. Commingling

10.04(2) A person receiving money to be applied on the purchase of mutual fund shares shall hold that money in trust, segregated from or in a separate bank or trust company account from that person's own money and shall remit the money to the mutual fund complex forthwith after receipt but there may be deducted before remission, sales or similar charges owing to that person with respect to those purchases that gave rise to the money being remitted subject to any provisions to the contrary prescribed in the regulations or in the arrangement between that person and the distribution company. Remission
of Money

PART XI—REMEDIES

11.01 Default of Capital Requirements

Mutual Fund
Capitalization
Inadequate

11.01(1) The management company of a mutual fund to which this Act applies shall notify the administrator forthwith if the value of the net assets of that mutual fund falls below one hundred thousand dollars and in the case of a mutual fund, shares of which are sold pursuant to contractual plans, if the value of the net assets of that mutual fund falls below one million dollars.

Management
Company
Capitalization
Inadequate

11.01(2) A management company shall notify the administrator forthwith if the management company does not satisfy the minimum capital requirements prescribed in the regulations.

Distribution
Company
Capitalization
Inadequate

11.01(3) A distribution company shall notify the administrator forthwith if the distribution company does not satisfy the minimum capital requirements prescribed in the regulations.

Administrative
Action

11.01(4) If the administrator is notified under subsections (1), (2) or (3) or becomes aware of a default in the minimum capital requirements of any part of a mutual fund complex he shall take such steps as he may deem appropriate, including consultation with the officers of the complex, to seek a solution whereby the mutual fund complex remedies the default as quickly as possible.

Court
Application

11.01(5) The administrator may, if, after consulting with appropriate officers under subsection (4), he is satisfied that it is not feasible to remedy the default or if he is satisfied that it is an emergency situation where there is no time for consultation, apply to the court for the appointment of a receiver or receiver and manager of the mutual fund.

Distributions

11.01(6) A receiver appointed under subsection (5) who is liquidating the portfolio assets of a mutual fund with a view to distribution to shareholders shall have the power to and shall, in making distributions from the assets of the mutual fund, unless otherwise directed by the court:

- a) after payment of the receiver's expenses and remuneration, pay to the mutual fund shareholders, other than the holders of the shares subject to the escrow agreement under section 3.05 to the extent of the shares subject thereto, the net asset value at the date the receiver was appointed of the shares held by them; and
- b) after the payments specified in paragraph (a) have been made, pay to the holders of the shares subject to the escrow agreement under section 3.05 the net asset value at the date the receiver was appointed of the shares held in escrow; and
- c) after the payments specified in paragraphs (a) and (b) pay any balance equally per share to all holders of shares of the mutual fund.

11.01(7) If any shares of the mutual fund have been redeemed within ninety days preceding the appointment of a receiver hereunder, or within five days after the appointment if the right of redemption has not been suspended, and those shares were beneficially owned, directly or indirectly by the management company of the mutual fund, the distribution company of the mutual fund or an associate of either of them or by an associate of the mutual fund then the redemption shall, unless the court orders otherwise, be set aside and the money paid out as a result of the redemption shall forthwith be paid to the receiver but this subsection does not apply to any redemption unless the net asset value per share of the mutual fund was less at the date the receiver was appointed than at the date of the redemption.

Redemptions
Reversed

11.02 Default of Investment Restrictions

11.02(1) A mutual fund complex shall notify the administrator forthwith of any default made by the mutual fund that forms part of the complex in compliance with investment restrictions imposed either by section 4.01 or by the stated investment practices of the mutual fund.

Default in
Investment
Restrictions

11.02(2) If the administrator is notified under subsection (1) or becomes aware of a default in compliance with the investment restrictions set out in section 4.01, the investment prohibitions set out in section 4.02, or the stated investment practices of a mutual fund he may consult with such officers of the mutual fund complex of which the mutual fund forms part as he deems appropriate to ensure that such default, if material, is remedied as quickly as possible and if such default is material and is not remedied or if the administrator is satisfied that it is an emergency situation where there is no time for consultation he may apply to the court for such relief as may be appropriate in the circumstances.

Administra-
tive Action

11.02(3) If the proportion of a mutual fund's assets which are restricted investments exceeds the proportion permitted under section 4.01 the mutual fund complex of which the mutual fund forms part shall notify the administrator forthwith and the administrator may:

Remedies

- a) on such terms and conditions as the administrator specifies, permit the value of restricted investments to exceed the maximum percentage prescribed in section 4.01 subject to review by the administrator at intervals of not more than ninety days; or
- b) order a suspension of the redemption right until the value of restricted investments is less than the maximum percentage permitted in section 4.01; or
- c) require the restricted investments to be valued in accordance with a method other than that used by the mutual fund; or
- d) order, require or permit a combination of any two or more of the remedies set out in paragraphs a), b) or c).

11.03 Ceasing to Issue

11.03(1) If a mutual fund has ceased to issue mutual fund shares a planholder who entered into a contractual plan within five years of such

Planholder's
Remedy

ceasing to issue shall be entitled to be paid by the distribution companies of the mutual fund an amount equal to that portion of the sales charges paid by or on behalf of the planholder in respect of mutual fund shares then owned by him pursuant to the contractual plan which is in excess of the amount of the sales charges that would have been paid by such planholder if he had purchased the mutual fund shares on the basis of the highest percentage sales charge for mutual fund shares purchased otherwise than pursuant to contractual plans on the schedule of maximum sales charges in effect at the date the contractual plan was entered into.

First in
First out

11.03(2) For the purpose of determining which mutual fund shares currently held by a planholder were purchased pursuant to a contractual plan any mutual fund shares surrendered by the planholder for redemption shall to the extent not specifically identifiable be deemed to be derived from the mutual fund shares purchased first by the planholder, whether pursuant to the contractual plan or otherwise and not previously redeemed.

Application

11.03(3) This section does not apply to a planholder with respect to a contractual plan entered into before the coming into force of this Act.

No Restrictions
on Redemptions

11.03(4) No person shall sell or offer to sell mutual fund shares pursuant to a contractual plan if the contractual plan contains provisions restricting the redemption of mutual fund shares purchased pursuant to the contractual plan in any manner not applicable to shares of that mutual fund purchased otherwise than pursuant to the contractual plan.

11.04 Use of Confidential Information

Use of
Confidential
Information

11.04 No person shall use specific confidential information relating to trades in portfolio assets, made or proposed to be made by any mutual fund, for his own advantage or the advantage of another person, otherwise than on behalf of the mutual fund.

11.05 General Right to Bring an Action

Direct Action

11.05(1) Without limiting the right of a person to bring any action that could have been instituted but for this section, an action to enforce any right accruing to a mutual fund and the proceedings necessarily incidental to that action may be commenced, prosecuted or continued in the name and on behalf of the mutual fund by:

- a) the board of directors of the mutual fund, if the mutual fund is incorporated; or
- b) the management company, the governors or trustees of or other body that properly represents the mutual fund, if the mutual fund is unincorporated.

Derivative
Action

11.05(2) Upon application by a person who at the time of the application is a shareholder of a mutual fund or upon application by the administrator, the court may, if satisfied that:

- a) there are reasonable grounds for believing that the mutual fund has a cause of action; and

- b) the application is *prima facie* in the best interests of the mutual fund and its shareholders; and
- c) either,
 - i) the mutual fund has refused or failed to institute legal proceedings seeking to assert the cause of action within sixty days after receipt of a written request from the administrator or another person so to do, or
 - ii) the mutual fund has commenced but has, without good reason, failed to prosecute diligently the action;

make an order upon such terms as to security for costs and otherwise as the court thinks fit, authorizing the applicant or requiring the administrator to commence or continue an action in the name of and on behalf of the mutual fund and may, as part of such order, make such provisions for the carriage of the action as the court thinks fit.

11.05(3) An order under subsection (2) may require the administrator to commence, prosecute or continue an action even if the applicant is not the administrator.

Requiring
Administrator
to Commence
Action

11.05(4) In determining whether the prosecution of an action is *prima facie* in the best interests of a mutual fund and its shareholders, the court shall, in addition to any other matters that it deems relevant, consider the relationship between the potential benefit to be derived from the action by the mutual fund and the shareholders thereof, and the cost involved in the prosecution of the action.

Considerations

11.05(5) Where a person has been authorized or required to commence and prosecute or to continue an action under this section, the court if satisfied upon the application by the board of directors or other body that properly represents the mutual fund, or on the application of the administrator or on the application of a shareholder, that the person or the administrator named in the order,

Replacement
of Plaintiff

- a) has failed or refused to commence the action within sixty days of the date of making of the order, or
- b) has, without good reason, failed or refused to prosecute diligently an action commenced pursuant to the order,

make an order, upon such terms as to security for costs or otherwise as the court deems appropriate, rescinding the previous order and authorizing the board of directors or other body that properly represents the mutual fund or the administrator or the shareholder to commence and prosecute or to continue the action in the name and on behalf of the mutual fund.

11.05(6) The court may order that the costs properly incurred in commencing, and prosecuting or continuing the action, as the case may be, shall be paid by the mutual fund.

Costs

11.05(7) Notice of every application under subsections (2) and (5) shall be given to the administrator and the mutual fund, and each of them may appear and be heard thereon.

Notice

Co-operation

11.05(8) Any order made under this section requiring the administrator or authorizing a shareholder to commence, prosecute or continue an action may provide that the mutual fund complex shall co-operate fully in the commencement, prosecution or continuation of the action and shall make available all books, records, documents and other material or information known to the mutual fund complex that is relevant to such action.

11.06 Prospectus Liability

Deemed
Reliance

11.06(1) A purchaser of the shares of a mutual fund to whom a summary prospectus is required to be delivered under section 9.01 shall be deemed to have relied on the most recent prospectus of the mutual fund for which a receipt has been issued by the administrator, together with any amendments thereto.

Right of
Rescission

11.06(2) A purchaser who is deemed under subsection (1) to have relied on a prospectus that contains an untrue statement of a material fact or omits to state a material fact necessary to make any statement therein not misleading in the light of the circumstances in which it was made, may rescind the purchase by giving notice of his intent to rescind to a distribution company that forms part of that mutual fund complex.

Payment

11.06(3) Upon notice being given under subsection (2) the distribution company receiving the notice shall pay to the purchaser, against a release of all rights to the shares to which the notice relates, the full amount paid by the purchaser with respect to the purchase without any deduction for sales charges or other charges.

Exception

11.06(4) Subsection (2) does not apply to an untrue statement of a material fact or an omission to state a material fact if:

- a) the untruth of such statement or the fact of such omission was unknown to the mutual fund complex and, in the exercise of reasonable diligence, would not have been known to the mutual fund complex; or
- b) the purchaser knew of the untruth of the statement or knew of the omission at the time he made the purchase.

Remedy in
Addition

11.06(5) The right of rescission conferred by this section is in addition to and without derogation from any other right the purchaser may have at law or under this Act.

Directors
Liability

11.06(6) Where a receipt for a prospectus of a mutual fund has been issued by the administrator and the prospectus contains an untrue statement of a material fact or omits to state a material fact necessary in order to make any statement therein not misleading in the light of the circumstances in which it is made, a distribution company of that mutual fund or a person who, at the time of the issue of the receipt is a director of the mutual fund or a person who, or an organization whose chief executive officer, chief financial officer or person having a similar status, signed any certificate contained in the prospectus, is liable to pay compensation to all

persons who have purchased mutual fund shares of that fund after the date the receipt for the prospectus has been given for any loss or damage such persons have sustained as a result of such purchase which has not been adequately compensated for either by the right granted under subsection (2) hereof or the redemption of the shares unless it is proved:

- a) that the untruth or omission was corrected by the filing of either an amendment to the prospectus or a more recent prospectus before the date of such purchase;
- b) that the prospectus or amendment was filed with the administrator without the person’s knowledge or consent, and that on becoming aware of its filing, he forthwith gave reasonable public notice that it was so filed;
- c) that, after the issue of a receipt and before the purchase of the mutual fund shares by such purchaser, on becoming aware of the false statement or the omission to state a material fact, the person withdrew his consent thereto and gave reasonable public notice of such withdrawal and of the reason therefor;
- d) that, with respect to every false statement, the person had reasonable grounds to believe and did believe that the statement was true;
- e) that the mis-statement or omission was part of a statement, report or valuation of an expert contained in the prospectus or fairly summarized in the prospectus and the person had no reasonable grounds to believe that the expert was not competent to make such statement, report or valuation; or
- f) that with respect to every false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

11.06(7) No notice may be given under subsection (2) after the expiration of ninety days from the date when the untruth or omission either became known to the purchaser or was corrected by the filing of either an amendment to the prospectus or a more recent prospectus under section 3.06.

Limitation
Period

11.07 General Remedies

11.07(1) Every person who contravenes a provision of this Act or the regulations for which no punishment is provided is guilty of an offence punishable on summary conviction.

Offence

11.07(2) Where a corporation is guilty of an offence under subsection (1) every director thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence unless it appears to the court that the director has acted honestly and reasonably and that, having regard to all the circumstances, he ought fairly to be excused.

Corporate
Offence

11.07(3) Where the administrator is satisfied that any person has failed to comply with or is violating any provision of this Act or the regulations,

Compliance
Order

notwithstanding the imposition of any penalty in respect of the non-compliance or violation and in addition to any other rights he may have, the administrator may apply to the court for an order directing such person to comply with such provision or for an order restraining such person from violating such provision and upon the application the court may make such order or such other order as the court thinks fit.

Appointment
of Receiver
or Receiver
and Manager

11.07(4) If the administrator is satisfied that the appointment of a receiver or of a receiver and manager would be in the best interests of the shareholders of a mutual fund, he may apply to the court to make an appointment and the court may make such an appointment where it is satisfied that it would be in the best interests of the shareholders of the mutual fund.

Liquidation

11.07(5) If a receiver is appointed under subsection (4) the provisions of subsection 11.01(6) apply on any liquidation made by the receiver.

Meeting of
Shareholders

11.07(6) The administrator may at any time require a mutual fund complex to call a meeting of the mutual fund shareholders to consider any matter relating to the affairs of the mutual fund complex and in connection with such meeting may require that such information as he deems appropriate be sent to the shareholders.

11.08 Appeals

Appeal
Right

11.08(1) Except as otherwise provided herein a person affected by a direction, decision, order or ruling of the administrator may appeal to the court of appeal.

Notice of
Motion

11.08(2) Every appeal under subsection (1) shall be by notice of motion filed with the administrator within thirty days after the delivery of the direction, decision, order or ruling and the practice and procedure upon and in relation to the appeal, unless the court of appeal orders otherwise, shall be the same as upon an appeal from a judgment of a judge of the court in an action.

Administrator
may appear

11.08(3) If a person appeals to the court of appeal under subsection (1) he shall give the administrator reasonable notice thereof and the administrator is entitled to appear in person or by counsel and to be heard.

Stay

11.08(4) The court of appeal may, where it considers it appropriate, stay any direction, decision, order or ruling pending the outcome of the appeal but unless so stayed, the direction, decision, order or ruling remains in effect until the court of appeal orders otherwise.

Additional
Evidence

11.08(5) The court of appeal may, where it deems appropriate, permit additional evidence to be introduced whether or not the evidence was reasonably available at the time of the direction, decision, order or ruling appealed from.

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| 11.08(6) Where an appeal is taken under this section, the court of appeal may direct the administrator to conduct a re-hearing or to make such direction, decision, order or ruling or to do such other act as the administrator is authorized and empowered to do under this Act or the regulations and as the court of appeal thinks fit, having regard to the material and submissions before it and to this Act and the regulations, and the administrator shall make such direction, decision, order or ruling or do such act accordingly. | Order on Appeal |
| 11.08(7) Notwithstanding an order of the court of appeal, the administrator has power to make any further direction, decision, order or ruling upon new material or where there is a material change in the circumstances, and every such direction, decision, order or ruling is subject to this section. | Power of Administrator |
| 11.09 Remedies for Prohibited Contracts | |
| 11.09(1) The administrator or a mutual fund or a shareholder of the mutual fund may apply to the court for an order that a loan or investment entered into in contravention of section 4.02 be voidable at the option of the mutual fund that is party thereto and the court may so order or may make any other order that the court thinks fit in the circumstances. | Court Application |
| 11.09(2) Where a loan or investment is entered into by a mutual fund in contravention of section 4.02 all directors of the mutual fund complex responsible for making the loan or investment or who assent thereto are jointly and severally liable to the mutual fund for any loss sustained by the mutual fund as a result of such loan or investment. | Special Liability of Directors |
| 11.09(3) No contract, arrangement or act of a mutual fund complex except as specified herein, that is otherwise lawful is void, invalid or unenforceable by reason of the fact that it was contrary to the provisions of this Act but the court may, on the application of or on behalf of the mutual fund prohibit further performance of any such contract, arrangement or act where the court is satisfied that such injunction will not injure an innocent person. | General |
| 11.09(4) Any director or agent of any part of a mutual fund complex who authorizes, assents to or acquiesces or participates in the entering into or performing of a contract, arrangement or act contrary to this Act is responsible in a civil action brought by any person injured as a result of such entering into or performing to the extent of reasonably foreseeable damages caused to the injured person unless the court is satisfied that the director or agent, as the case may be, has acted honestly and reasonably, and that, having regard to all the circumstances, he ought fairly to be excused from such responsibility in which case the court may make such order as it deems appropriate. | General Liability of Directors |

PART XII—THE AUDITOR AND SURVEILLANCE

12.01 The Auditor

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| Auditor | 12.01(1) A mutual fund or its shareholders shall appoint or elect as its auditor a person who has membership in good standing in an institute or association of accountants incorporated by or under the authority of the legislature of a province or a firm of accountants of which one or more members or employees have such membership or a person, firm or organization approved by the administrator. |
| Ineligible Persons | 12.01(2) A person shall not act as auditor of a mutual fund if that person or any partner of or employee employed in a professional capacity by that person is a director, employee or owner of any shares in the management company, the distribution company or the mutual fund. |
| Report | 12.01(3) The auditor of a mutual fund shall make the examination that is necessary to report on the financial statements of the mutual fund at least once in every year and shall report on the financial statements of the mutual fund stating whether those financial statements, in his opinion, present fairly the information they purport to present or, if in his opinion they do not fairly present such information, he shall give an explanation of the deficiencies in his report. |
| Access | 12.01(4) The auditor has right of access at all times to all records, documents, accounts and vouchers of the mutual fund complex and is entitled to require from the directors and employees of the mutual fund complex any information that, in his opinion, is necessary to enable him to examine and report as required by this section. |
| Illegalities | 12.01(5) If the auditor, in connection with his examination of the records of a mutual fund, becomes aware of facts that to his knowledge indicate a contravention of the laws of Canada or any province by the mutual fund complex the auditor shall send to the administrator a report of those facts and may also report them to the mutual fund shareholders. |
| Further Report | 12.01(6) If the auditor, in connection with his examination of the records of a mutual fund, including the lists prepared under section 7.08, becomes aware of facts which indicate the existence of conduct or arrangements which may be detrimental to the interests of the mutual fund shareholders, the auditor may report those facts to the administrator and may also report those facts to the mutual fund shareholders. |
| Administrator may Appoint | 12.01(7) If a mutual fund has no auditor or no auditor qualified under subsections (1) and (2) to report under this section the administrator may appoint an auditor for the mutual fund and fix the remuneration to be paid to the auditor by the mutual fund. |
| Replacement | 12.01(8) A mutual fund complex shall notify the administrator if the auditor of the mutual fund that forms part of the complex resigns or if it is |

proposed that he be replaced and shall give the administrator notice of any proposed new auditor for the mutual fund at least thirty days before his appointment or election is scheduled to take place.

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| 12.01(9) The administrator may require that the mutual fund obtain approval from the mutual fund shareholders under section 5.01 before any new auditor is appointed or elected. | Shareholder Approval |
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12.02 Surveillance by the Asset Custodian

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| 12.02(1) If a custodian of the portfolio assets of a mutual fund becomes aware of facts that to the knowledge of the custodian indicate a contravention of the laws of Canada or of any province by the mutual fund complex, the asset custodian shall send to the administrator a report of those facts. | Illegalities |
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| 12.02(2) If a custodian of the portfolio assets of a mutual fund becomes aware of facts which indicate the existence of conduct or arrangements which may be detrimental to the interests of the mutual fund shareholders in respect of dealing with the assets of the mutual fund in its custody, the asset custodian may report those facts to the administrator. | Further Report |
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| 12.02(3) A mutual fund complex shall notify the administrator if the custodian of the assets of the mutual fund that forms part of the complex resigns or if it is proposed that he be replaced and shall give the administrator notice of any proposed new custodian at least thirty days before its appointment is proposed to take place. | Replacement |
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| 12.02(4) The administrator may require that the mutual fund obtain approval from the mutual fund shareholders under section 5.01 before any new custodian is appointed. | Shareholder Approval |
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12.03 Surveillance by the Administrator

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| 12.03(1) The administrator may inspect the books and records of a mutual fund complex and may require the directors of the complex to reply to written questions regarding the operation of the mutual fund. | Administrator may Inspect |
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| 12.03(2) Where it appears probable to the administrator that any person has contravened any of the provisions of this Act or the regulations, the administrator may appoint any person to make such investigation as he deems appropriate for the due administration of this Act, and in connection with the appointment shall determine and specify the scope of the investigation. | Investigation |
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| 12.03(3) For the purpose of any investigation under subsection (2), the investigator may, to the extent necessary to carry out the terms of the order appointing him or any amendment thereto, investigate, inquire into and examine: a) the affairs of the person in respect of which the investigation is being made and any books, papers, documents, correspondence, | Scope of Investigation |
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communications, negotiations, transactions, investments, loans, borrowings and payments to, by or on behalf of or in relation to or connected with such person and any property, assets or things owned, acquired or alienated in whole or in part by such person or by any person acting on behalf of or as agent for such person; and

- b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with any such person and the relationship that may at any time exist or have existed between such person and any other person.

Power to
Summon
Witnesses

12.03(4) The investigator appointed under subsection (2) has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the court and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession shall make the person liable to be committed for contempt by a judge of the court as if in breach of an order or judgment of the court.

Counsel

12.03(5) A person giving evidence at an investigation under subsection (2) may be represented by counsel.

Seizure

12.03(6) Where an investigation is ordered under subsection (2) the investigator may to the extent necessary to carry out the terms of his appointment, seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.

Inspection
of property

12.03(7) Where any documents, records, securities or other property are seized under subsection (6), such documents, records, securities or other property shall be made available for inspection and copying by the person from whom seized at a mutually convenient time and place.

Experts

12.03(8) Where an investigation is ordered under subsection (2), the administrator may appoint an accountant or other expert to examine documents, records, properties and matters of the person whose affairs are being investigated.

Report

12.03(9) The investigator appointed under subsection (2) shall report the result of his investigation to the administrator.

Report to
Minister

12.03(10) Where, as a result of the report of an investigation made under subsection (2), the administrator is satisfied that any person may have contravened any of the provisions of this Act or the regulations, the administrator shall, if he believes that the contravention is of material significance, send a full and complete report of the investigation, including the report made to the administrator, any transcript of evidence and any material in the possession of the administrator relating thereto to the Attorney-General of Canada and to the Minister.

12.03(11) Where a report has been made under subsection (10) the Minister may, after consultation with the administrator, cause the report to be published in whole or in part in such manner as he deems appropriate.

Publication

12.03(12) No person shall be excused from attending and giving evidence and producing documents and records to an investigator under this section by reason only that the evidence may tend to criminate him or may tend to establish his liability to a civil proceeding but no such evidence shall be used or is receivable in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence.

Self Incrimination

12.03(13) The administrator may, if satisfied that a self-regulatory association has been established that is genuinely representative of a significant part of the mutual fund industry subject to regulation under this Act and that complies with regulations, specifically recognize such self-regulatory association and may delegate to it such of his powers under this section with respect to members of the association as he deems appropriate.

Self-Regulatory Association

12.04 Surveillance by Shareholders

12.04(1) Shareholders representing in the aggregate not less than one percent of the outstanding shares of a mutual fund may apply to the court upon such notice as the court may require, for an order directing an investigation of the mutual fund complex or any part thereof.

Application to Appoint Investigator

12.04(2) If upon an application under subsection (1) it appears to the court that there is reason to believe that:

- a) the business or affairs of the mutual fund complex may have been carried on with intent to defraud any person; or
- b) the business or affairs of the mutual fund complex may have been carried on or conducted, or that the powers of its directors are or may have been, exercised in a manner oppressive or unfairly prejudicial to or in disregard of the interests of a shareholder;

the court may order an investigation of the mutual fund complex or any part thereof.

Reasons for Court Action

12.04(3) A shareholder who makes an application under subsection (1) shall give the administrator reasonable notice thereof and the administrator is entitled to appear in person or by counsel and to be heard.

Notice

12.04(4) An applicant under this section shall not be required to give security for costs.

Security for Costs

12.04(5) In connection with an investigation under this section the court may make any order it deems appropriate and without limiting the generality of the foregoing the court may:

- a) appoint an investigator and fix the remuneration of and replace an investigator;

Contents of Order

- b) determine the notice to be given to any interested person, or dispense with notice to any person;
- c) authorize an investigator to enter any premises in which the court is satisfied there might be relevant information, and to examine any thing and make copies of any document or record found on the premises;
- d) require any person to produce documents or records to the investigator;
- e) authorize an investigator to conduct a hearing, administer oaths, and examine any person upon oath, and may specify rules for the conduct of the hearing including any right to counsel;
- f) give directions to the investigator or any interested person on any matter arising in the investigation;
- g) order the investigator to make an interim or final report to the court;
- h) determine whether a report of an investigator should be published and, if so, order the administrator to publish the report in whole or in part or to send copies to any person the court designates; and
- i) order an investigator to discontinue an investigation.

Report to
be filed

12.04(6) The court shall send to the administrator a copy of every report made by an investigator under this section.

Powers of
Investigator

12.04(7) An investigator under this section has the powers set out in the order of the court.

Incrimination

12.04(8) No person shall be excused from attending and giving evidence and producing documents and records to an investigator under this section by reason only that the evidence may tend to criminate him or may tend to establish his liability to a civil proceeding but no such evidence shall be used or is receivable in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence.

PART XIII—ADMINISTRATION

13.01 The Administrator

13.01(1) The Minister may appoint an administrator and one or more deputy administrators to carry out the duties and exercise the powers of the administrator under this Act.

Deputies

13.01(2) The administrator and the deputy administrators shall devote such time as may be necessary for the due performance of their duties under this Act.

Time

13.01(3) The administrator may appoint one or more experts to assist him in such manner as he may deem appropriate.

Experts

13.01(4) The administrator may appoint a secretary who may:

- a) accept service of all notices or other documents on behalf of the administrator;
- b) sign any direction, decision, order or ruling made by the administrator;
- c) certify any document or record where such certification may be required; and
- d) perform such other duties as may be imposed by the administrator.

Secretary

13.01(5) A certificate purporting to be signed by the secretary is, without proof of the office or signature certifying, receivable in evidence for all purposes in any action, proceeding or prosecution.

Certificate

13.01(6) The administrator may,

- a) where he is about to order an investigation under section 12.03 or during or after an investigation under section 12.03; or
- b) where he is about to make or has made a direction, decision, order or ruling suspending or cancelling the registration of any person; or
- c) where proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person;

Power of Administrator with respect to Assets in Custody.

in writing or by telegram direct any person having on deposit or under control or for safekeeping any cash or other assets of the person referred to in paragraph (b) or (c) to hold such funds or securities or direct the person referred to in paragraph (b) or (c) to refrain from withdrawing any such cash or other assets from any other person having any of them on deposit, under control or for safekeeping or to hold all cash or other assets of clients or others in his possession or control until the administrator in writing revokes the direction or consents to release any particular cash or other assets from the direction and in the case of a bank, loan or trust company the direction only applies to the offices, branches or agencies named in the direction.

Court Application **13.01(7)** Any person in receipt of a direction given under subsection (6) if in doubt as to the application of the direction to any cash or assets or in the case of a claim being made thereto by any person not named in the direction, may apply to a judge of the court who may direct the disposition of such cash or assets and may make such order as to costs as the court deems appropriate.

Additional Powers **13.01(8)** The administrator shall be responsible for the administration of this Act and in connection therewith shall have power to designate, classify and do such other things as are contemplated by this Act.

13.02 Publication of Administrative Decisions

Publication **13.02(1)** The administrator shall establish a system to ensure that, as soon as practicable, all significant statements of general policy or interpretations of general application formulated and adopted by the administrator are published.

Index **13.02(2)** The administrator shall cause to be published an index of all orders and rulings given under this Act and shall, upon payment of reasonable costs associated with such reproduction, reproduce and send to any interested person the reasons for any particular order or ruling together with a summary of the facts on which it was based.

Confidentiality **13.02(3)** To the extent required to prevent a material invasion of personal privacy the administrator may delete identifying detail when he publishes or reproduces any materials under this section but in each case the justification for the deletion shall be explained fully in writing.

Exceptions **13.02(4)** Subsections (1) and (2) do not apply to matters that are:
a) specifically required by the Minister to be kept secret in the interest of the national defence or foreign policy;
b) related solely to the internal rules and practices of the administrator or his staff;
c) investigatory files compiled for law enforcement purposes; or
d) specifically exempted from disclosure by another Act.

13.03 General Relief and Transitional Provisions

Relief **13.03(1)** Upon application by a mutual fund complex or other interested party the administrator may relieve or exempt a person or organization from future compliance with any of the provisions of this Act on such terms and conditions as he may permit.

Transitional **13.03(2)** The administrator shall adopt reasonable transitional provisions for mutual fund complexes established before the date this Act becomes effective which provisions will be in effect during a period of twelve months after this Act becomes effective.

13.03(3) Upon application by an interested person the administrator may issue an advance ruling informing that person how the administrator will interpret specific provisions of this Act in respect of a definite transaction contemplated by that person.

Advance Ruling

13.04 Regulations

13.04(1) The Governor-in-Council may make regulations:

Regulations

- a) prescribing the number of dividends that a mutual fund may declare or pay out of realized capital gains in any financial year as defined in subsection 5.02(1);
- b) prescribing that evidence of fidelity insurance be filed with the administrator and prescribing the amounts of such minimum insurance coverage required and prescribing the persons to be insured and authorizing the administrator to increase the amount or scope of such coverage;
- c) prescribing the insurance to be carried by the mutual fund complex with respect to specified risks and the amounts of minimum coverage required;
- d) prescribing any matter required or authorized by this Act to be prescribed; and
- e) prescribing a fee schedule for registration and other matters under this Act.

13.04(2) Subject to subsection (3) the Minister shall publish in the *Canada Gazette* at least sixty days before the proposed effective date thereof a copy of every regulation that the Governor-in-Council proposes to make under this Act and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

Pre-publication

13.04(3) The Minister is not required to publish a proposed regulation if:

Exception

- a) the proposed regulation grants an exemption or relieves a restriction;
- b) the proposed regulation establishes or amends a fee;
- c) the proposed regulation has been published pursuant to subsection (2) whether or not it has been amended as a result of representations made by interested person as provided in that subsection; or
- d) the proposed regulation makes no material substantive change in an existing regulation.

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